#### THE

## Accomplish'd PRACTISER

IN THE

## High Court of Chancery,

SHEWING

The Whole Method of Proceedings, according to the present Practice, from the Bill to the Appeal inclusive:

Containing

The Original, Power and Jurisdiction of the Chancery, both as a Court of Law and Equity; the Office of the Lord Chancellor, Master of the Rolls, and the Rest of the Officers.

ALSO

The best Forms and Precedents of Bills, Answers, Pleas, Demurrers, Writs, Commissions, Interrogatories, Affidavits, Petitions and Orders;

Together with

A LIST of the Officers and their Fees:

Likewise

Other MATTERS useful for Practifers.

The Second Edition, with all the Practice enlarged under every Head, and an Addition of Precedents of all Kinds; also the Proceedings upon a Commission of Lunacy.

By JOSEPH HARRISON of Lincoln's Inn, Efq;

In Two Molumes.

VOL. I.

In the SAVOY: Printed by HENRY LINTOT, (Affignee of Edw. Sayer, Eiq:) for T. Maller, at the Crown and Mitre opposite Fetter-lane in Fleet-firest. MDCCXLV.

SUK 972 HAR

oblivati role Mannos of Prografing, seconding tarding Profiles, Rome the Bill to the affire I be record Incidence a clarke Charests a colony to the Vallant Roll Colonia and a significant ir, rager of the Rela STATE OF SUCCESSION all that French Protesters of Bills, Answers less Dengers, Writz Coordina, Lines Artillane Pentions and Orders; SEP 3 0 1915 and the state of t The state of the s ment begular sales i chi ili mine grasque a strette della A Pro- Live To Contract of Lines. #M. Osla P. B. Dan R. R. S. Charle J. Incoloradian. T. market Clear Colonial and Colonial Bred AROY: Money by Hayar' Layer, (Adgues of the state of the state of the state of the Course and there describe Petersland in State press. Intife C. S. V.

#### OFTHE

## COURT

OF

# Chancery.

# balle to to C H A P. I.

Of the Ordinary Court in Chancery proceeding according to Law; and also of the Extraordinary Court proceeding according to Equity.

COURT is the Place where Justice is judicially administred; and it is called Curia, saith Valla, à Curà; for that Care is to be taken therein for the deciding of Controversies: But it seemeth rather to be called Curia, an Assembly, or the Place of Assembly, like as the King's Court was first called Curia, because the Court of Justice was there first holden.

Bill at the plant out to k

It is the Opinion of several learned Authors. that the Chancery had its Name originally from certain Bars laid one over another cross-wife, like a Lattice, wherewith it was environ'd to keep off the Press of People, and not to hinder the View of those officers who far therein; fuch Grates or Cross bars being by the Latins called Cancelli. Vide Camden, Dugd. 32. Cowell, Cassiod. Epist. 6. lib. 11. Pet. Pytheus, lib. 2. Adverf. c. 12.

The Court of Chancery is the King's Prerogative Royal; and all other Courts (except the Par-

liament) are inferior to it.

(a) 8 Ed. 4. 5. 9 Ed. 4. 15. 14 Ed. 4. 7. (b) Stan. Prær.

And in the Chancery are two Powers, or Courts, the one (a) Ordinary, the other (b) Extraordinary; the former is a Common Law Court. and the Proceedings therein are according to the c. 20. fol. 65. b. Laws and Statutes of the Realm, called the Pet-Ph Com. fol. 72. ty-Bag Side; the latter is a Court of Equity, and proceeds according to Equity and good Conscience. Vide 2 Inft. 552. 4 Inft. 79. Lambard's Archaion. 58, 78. Etef. Observ. Office Lord Chan: 44, 45.

With respect to the Ordinary or Legal Court, it has been a Court of Record Time out of Mind, and held Coram Domino Rege in Cancellaria, on the Petty Bag Side. 2 Inft. 552, &c. 4 Inft. 79. I Lev. 142. Anno 9 Ed. 4. All the Judges of England did affirm, that the Chancery was the King's Court, and had been Time out of Mind; fo that it was impossible to trace its Original.

The Commencement of this Court is much more ancient than the Court of Equity: And those Authors who hold that the Court of Chancery came in with William the Conqueror are certainly mistaken; for both the British and Saxon Kings had their Chancellers and Court of Chancery, out of which Writs remedial iffued as at this Day, 4 Inft. 78. Cand. 180. And one Walfton had a Pardon inroll'd in the Court of Chancery, Anno 872. Reg. Allfrido. 4 Infl. 78, 79. As for its Antiquity in this Realm, it is of nolefs,

11

UI

ha

h

less, as our learned Seldon (c) conceives, than (c) Discourse King Ethelbert's Time, who was the first Chrisand Dignity of stian King of the Saxons. Vide Dudg. 32. Lord Chancellor, by him presented to Sir Francis Bacon.

That the Court of Chancery proceeding according to Law, hath had Jurisdiction Time out of Mind, seems settled by the best Authorities. 9 Ed. 4. 53. b. 4 Inst. 78. Hob. 63. 12 Co. 113, 114.

This Court hath (d) Jurisdiction to hold Plea (d) 4 Inst. 79. of Scire Facias for Repeal of Letters Patent, at 38. the Suit of a former Patentee, when they are granted to several Persons for one and the same Thing: But when they are against Law, or granted upon a falle Suggestion, the King may have a Scire Facias to repeal his own Grant by Letters Patent. [See 18 Hen. 6. c. 1. 3 Ed. 6. c. 4. 13 Elis. c. 6.] Here also it may hold Plea of Petitions, Monstrans de Droit, (i. e.) for a Lamb. A-chair Subject be restored unto Lands, &c. which he on. 58. hews to be his Right. [See 34 Ed. 3. cap. 14. 36 Ed. 3. cap. 13. 4 Rep. 54.] Traverses of Ofices, i. e. to prove that an Inquisition taken of Lands or Goods is defective and wrong. There hay be also a Scire Facias upon Recognizances n this Court. [See 23 Hen. 8. c. 6.] Execution pon a Statute-Staple, &c. But the Execution pon a Statute-Merchant is returnable either into he K. B. or C. B. 4 Inst. 79. And this Court hay hold Plea of all Personal Actions by or gainst any Officer or Minister of this Court, in Respect of their Service or Attendance, and by Acts of Parliament, of several Offences and Caucs. 4 Inst. 80. 1 Danv. 748.

This Court is Officina Justitiæ; out of which The Chancery in our old Il Original Writs, all Commissions of Charitable Books is called Jies, Bankrupts, Sewers, Ideots Lunaticks, &c. Officina Brevinat pass under the Great Seal, do issue, and for um Originalium & Remediation it is always open. Vide 4 Inst. 80, 81.

all Original Writs were devised and framed.

0%

In

e d

100

f

,

F

delivering the

Jefferson and Dawson,

2 Saund. 5.

Stoughton,

This (e) Court cannot hold Plea of (f) Lands (e) 2 And. 164. (f) And there- but it may of Trespals or Debt. 20 H. 6. 32. Suit was in the Chancery of Cheffer for a Woman's Jointure, a Prohibition was granted. I Sid, 189.

> The Process is under the Great Seal, and is now in English, as are all other Law Proceedings, by 4 Geo. 2. c. 26. But the Proceedings in this Court are not inrolled in Rolls, but remain in Filaciis, being filed up in the Office of the Petty-

In profecuting Causes, if the Parties descend

Bag. 4 Inft. 80.

to iffue, this Court cannot try it by a Jury; but the Lord Chancellor delivers the Record with (2) An Officer's his (g) proper Hands into the King's Bench, to be tried there; because for that Purpose both fufficient. Vide Courts are accounted but one, and after Trial it is to be (b) remanded into Chancery, and there Judgment to be given: But if there be a Demurrer in Law, it shall be argued and adjudged in The King and Chancery. 4 Inst. 80.

2 Saund. 157. and the Prince's Case, & Co. Mich. 1700. Between the King and the Warden of the Fleet. (b) But Quære, Whether the constant Practice has not been to give Judgment in the King's Bench. Vide All. 16, 17. Stil. 84, 94. Cro. Jac. 12. 2 Roll. Abr. 349 and 2 Sund. 27. where it is refolved, that it there be a Demurrer for Part, and Issue for Part, the whole Record shall be transmitted into B. R. and the Judgment given there; and 2 Saund. 23. S. P. and there faid, that the Books cited a Init. 80. do not warrant the Opinion. But if the Issue is to be tried otherwise than by a Jury, as by the Bilhop's Certificate, &c. Judgment shall be given in Chancery. 1 Jon. 80. Lat. 3.

> When there is a Demurrer upon Part, and Iffue upon Part, the Record being in B. R. that Court ought to give Judgment, because there can be but one Execution; and if the Record come thither intirely, they cannot fend it tack again. Vide 2 Saund. 23, 24, &c. 1 Mod. 29. 1 Sid. 438. 1 Lev. 283, 284, though it was faid, that the Chancery might have given Judgment upon the Demurrer before the Record came into B. R. 2 Kcb. 584, 587, 588, 608. 1 Lilly 499.

> Hill. 1682. Rex ver. Cary. A Writ of Error was moved for into B. R. on a Judgment in the

Petty-

Petry-Bag, but denied. The Lord Keeper was pleased to think (i) Dyer and (k). Coke's Opinion (i) Dy. 214. 2. ill founded, and thought the Jurisdiction of the (k) 4 lnft. 80. Chancery on the Latin Side not subject to be controlled by B. R. and said he would (1) injoin all (1) That upon a Judgment gifuch Writs of Error. 1 Vern. 131. Court, a Writ of Error doth lie returnable into the King' Bench. Vide 13 Ed. 3. 25 Aff. 24 Dyer 315. Plow. 393. And by Lord Coke, the Stile of the King's Bench is Coram Rege, but the Stile of the Chancery is Coram Rege in Cancellaria, and Additio probat minoritatem. 4 Inft. 80.

Having confidered the Ordinary Court in Chancery, proceeding according to Law; I shall in the next Place speak of the Extraordinary Court, proceeding according to Equity.

.5 0

13

.

5 .

l

t

1

t

n

e

.

e

C

1

e

With Respect to the Rife of this Court of Equity; if we do but consider that the Administration of Justice, in this Realm, is the Prerogative of the King, who is the immediate Minister of Justice under GOD, and sworn at his Coronation to deliver to his Subjects Aquam & rectam Justitiam, we may easily perceive a Neceffity of erecting this Court. For inafmuch as positive written Laws consist of general Institutions grounded upon that which happeneth for the most part, the utmost Extent of Human Wildom being incapable of forefeeing every particular Thing which Time and Experience doth beget, there was of Necessity Variety of particular Cases frequently happening, wherein no proper Remedy could be given by the Ordinary Courts proceeding according to fuch positive Laws; and many Times the Rigour of the Law proves Injustice and Oppression: And as the Judges in our Courts of Law, are bound by their Oaths to observe the strict Rules of Law, tho' fensible of a manifest Injustice, therefore to supply the Want, and relax the Rigour of the positive Laws, Recourse was had to the King, in order to obtain Relief in such Cases, and in such Manner, as should appear to be just and equitable. Vide Bract. 108.

B 3 Note;

#### Of the Court of Chantery.

Note; It appears by the Laws of King Fdgar, that there was a Power by Law vested in the King to moderate the Summum Jus according

to Equity and good Conscience.

This Court, faith my Lord Elesmere, may be called the King's High Court of Conscience, made especially to redress (m) private Causes, such as by Extremity of Law cannot have agreeable End to Equity, by Reason of Circumstances hindering; wherein it is to be noted, that Conscience is so regarded in this Court, that the Laws are not neglected, but they must both meet and join in a Third, that is in a Moderation of Extremity. Here the Rigour of the Law is temper'd with the Sweetness of Equity, which is

nothing but Mercy qualifying the Rigour of Justice: Nam iffa etiam Leges cupiunt ut jure

regantur, i. e. ut levi & facili as benizna interpretatione temperentur.

For the Original of this Special Court, it is to be confidered, that in the Time of the Saxons and of the Danes, the King by himself did hold a High Court of Justice, wherein he sat in Perfon, and did judge not only according to meer Right and Law, but also after Equity and Conficience; and this is confirmed by the Law of the (n) Saxon King Edgar, viz. Let no Man seek to the King in Matter of Variance, unless he cannot find Right at home; but if the Right be too heavy for him, then let him seek to the King to have it lightened. And the like to this Law is also among the Laws of Canutus the Dane, fol. 108. Eles. 22.

Originally the Method of Application for Relief was by Bills, or Petitions to the King, sometimes in Parliament, and sometimes out of Parliament, commonly directed to the King and his

Council.

Lamb. Archaion. 62, 63. a Inft. 552. z Ley. 242. In the Time of King Edward I. Matters of Grace were only determinable by the King, or by such as he appointed, and not in any fix'd or established Court of Equity; so that those who sought

(\*) Saxon-

(m) Lamb.

\$0, 81.

Archaion, 79,

fought Relief in Equity were Suitors to the King himfelf, who being affifted with his Chancellor and Council did mitigate the Severity of the Law in his own Person, when it pleased him to be prefent, and (o) did in his Absence refer (o) Lamb. Ar-Petitions fometimes to the Chancellor alone, and chaion. 59. fometimes to the Chancellor and some other of Elefuere 22,26. his Council

At what certain Time the Court of Chancery first exercised an extraordinary Power of acting according to Equity, feems from the great Distance and Obscurity of the Matter extremely doubtful. But it is agreed that its Commence- . ment is not so ancient as the Ordinary Court before spoken of. And I think none of the ancient Lawyers, who speak of this Chancery, ever mention it as a Court of Equity or Conscience; but always as a Court of ordinary Jurisdiction to determine Causes according to the Rules of the Common Law.

1

e

d

S

e

r

r

My Lord Coke fays, that the first Decree in Chancery that he finds made by the Chancellor, Ror. Parl. 17. was in 17 R. 2. John de Windfor against Richard R. 2. n. 10. le Scrope, 2 Inst. 553. 4 Inst. 83.

And Lambard, in his Archaion. 75. fays, That he doth not remember that in our Reports of Common Law, there is any Mention of Causes before the Chancellor for Help in Equity, but only from the Time of (p) King (p) Vide 2 Inft. Henry IV. in whose Days, by Reason of intestine Dugd. 37. Troubles, Feoffments to Uses did either first begin, or else grow common and familiar; for Remedy in which Cases of Uses chiefly the Court of Chancery was then fled unto as the common Altar of Help and Refuge. But we find no Caules in this Court reported in our Books before the Reign of Hen. 6. [4 Inft. 82.] Such Caufes faith Dugd, as fince that Time were heard in this Court, having formerly been determined in the Lords House of Parliament, as may seem from the Number of Petitions in Parliament, of that Nature, which are yet extant. Dugd. 37. And B 4

(q) Obser. Of my Lord (q) Elesmere writes, that there is no fice of Lord Record of Proceedings, by Way of Petition, or 58.

(r) English Bill, before that Time, to be found in the Office of Records: But Records, Reports, H. 6. there are also some Bills and Cases, are plentiful enough in its ordinary in French, as Jurisdiction long before.

appears by Records of that Year. Els. 45.

The most probable Opinion, as I humbly conceive, seems to be, that the Equity Side of the Court of Chancery began in the Reign of Ed. 3. [Vide 20 Ed. 3. 36 Ed. 3. Lamb. Archaion. 73, 74. I Lev. 241, 242. I Lill. 496. Eles.

28. Hift. Chan. 1 Danv. 748.

Lambard, in his Archaion. 62. fays, That when the Courts of Chancery and King's Bench ceased to be Ambulatory, and became settled Courts in a certain Place (which was 4 Ed. 3.) that then the King committed to his Chancellor, together with the Charge of the Great Scal, his only legal, absolute, and extraordinary Preeminence of Jurisdiction, &c. But the Writ or Proclamation, 22 Ed. 3. directed to the Sheriffs of London, by them to be made publick, feems to have given it an Establishment; by which the King commanded that all Bufiness, relating as well to the Common Law of the Kingdom, as to fuch by special Grace cognizable by him, should be prosecuted before the Chancellor, &c. And this Delegation afterwards received the Sanction of an Act of Parliament, 36 Fd. 3. which Act, as some think, first gave it Authority. Vide 1 Lev. 242. That this Court did from this Time exercise a Jurisdiction in Matters of Equity, feems evident from the Parliament Rolls in the Reign of Ed. 3. Vide 1 Rell. Abr. 372. And the Complaints made in Parliament of the Exercise of this Power, to the Subversion of the Common Law, vide Rot. Parl. Anno 2 R. 2. - 7 R. 2. And this occasioned the Statute 17 R. 2. cap. 6. which reciring that People were compelled to come before the King's Council, or

#### De the Court of Chancery.

in the Chancery, by Writs, grounded upon untrue Suggestions, enacts, that the Chancellor for the Time being, presently after such Suggestions are duly found, and proved untrue, shall have Power to ordain and award Damages according to his Discretion, &c. which, instead of diminishing, increased the surisdiction of this Court.

A Commission, or Letters Patent, without an Act of Parliament, cannot raise a Court of Equity; but a Court of Equity may be held by Prescription. 4 Inst. 87, 121, 213, 242, 248. 12

Rep. 113. 2 Rol. Abr. 164. Hob. 63.

This Court proceeds secundum equum & bonum, and moderates the Rigour of other Courts, which are bound to observe the strict Letter of the Law; and it rather regards the Intention than the Words of the Law, and is of most excellent Use and Benefit to the Nation, in exerting Power, and granting Relief, in Cases wherein the Subject is without Remedy in the Courts of Common Law: But generally, where Matters are determinable by the Common Law, there ought not to be Relief in Chancery. 15 Hen. 6. vide Treatise of Equity, fol. 4. And Equity cannot regulate the Maxims of the Common Law, altho' there may be some Inconveniences in them, for that would be to exercise a Legislative Authority, and make a new Law. MSS. Ca. in Cha. Lord Bath against Sherwin, Trin. 8 Anne. It is observable, that in many Cases this Court will give Relief against, besides and beyond the Rules of Common Law, fo as the Example introduce no general Mischief. [Vide 1 Danv. 745 to 766.] In short, every Matter that proves inconfistent with the Intention of the Legislator, or is contrary to natural Justice, may be relieved here. Antiently, indeed, forfeitures of Penalties and Conditions were not here relieved, neither was an Accident preventing the Performance of a Condition, and incurring a Forfeiture. But now it is every Day's Practice to relieve in fuch Cafes, without

without fuch Limitation, where the Damage is under the Penalty, and the Advantage accruing to the Person taking Benefit of the Condition. And this is founded upon an unerring Rule of Tuffice; for there is no Injury to the Person unto whom the Condition or Penalty is forfeited, because he is in no worse Case, than if the Condition had been performed. MSS. Ca. in Cha. Lord Bath against Sherwin, Trin. 8 Anne.

(s) 4 Inft. 84. Crompt. Jur. 52. a. I Rol. Abr, 373. (t) MSS. Ca. in Cha. Sherwin, Trin. 8 Anne. 4 Inft. 213. 1 Dany. Abr. 749.

The Jurisdiction and Power of this Court of Equity is of vast Extent, tho' no Court of (s) Record, and (t) it is divided into three Heads: Fraud, Conscience and Accident. In this Court the Lord Chancellor himself may sue: \* But he cannot make a Decree in his own Caufe. Here Re-L. Bath against lief is often given for or against an Infant, notwithstanding his Minority; for or against a married Woman, notwithstanding her Coverture. In some Cases she may sue her Husband, as for Alimony or Maintenance, when they are parted, &c. And she may be compell'd to answer without her Husband. Here Executors may fue one another, or one Executor alone without the rest may be fued; but he shall be charged for no more than he has received.

This Court acts chiefly in Matters of Fraud,

Accidents, and Trusts.

(u) All Frauds and Deceits, for which there is no Remedy at Common Law; all Accidents, as to relieve Obligors, Mortgagors, &c. against Penalties and Forfeitures upon Statutes, Bonds, Mortgages, &c. where the Intention was to pay the Debt or Duty, but some extraordinary Matter happen'd to disable the Debtor; and all Breaches of Trust and Considence, nor executed, by the 27 Hen. 8. c. 10. concerning Uses, are properly cognizable here; for Trufts are fo incirely under the Jurisdiction of the Chancery, that the Courts of Law can take no notice of em. Parker and Lilly, Lucas's Reports 103. Also this Court will afford Relief, when unreasonable Engage-

ments have been made, or Engagements without

Con-

(w) West's Sym. of Chancery, fed. 18, 19. 4 Inft. 84. 2 Dany. Abr. 749, 750, 751, 752, 753, 754, &c. 769, 770, Vide Gilb. 2.

Confideration; where a Charge lies upon one Man alone at Common Law, to make others contribute to the Charge; it will compel Men to perform their Agreements; reduce the general Customs of a Manor to a Certainty; relieve a Copyholder against the ill Usage of the Lord; ascertain Fines of Copyholders; Decree for a Liberty of Common, Fishing, &c. and upon every Interruption order an Attachment; Decree for Inclosures to be made of Lands and Grounds that are Common, or for inclosing Lands in a Parish, forcing the Parson to consent upon an Equivalent where others agree; Decree for Recovery of Money or Land given to Charitable Ules, and mif-employed; distinguish a Man's Land confounded with others; Decree that one shall have the Tuition of a Child; force unreasonable Creditors to compound with an unfortunate Debtor, not by ill Husbandry; make Executors and others give Security, and Interest for Money that is to lie long in their Hands; order the Performance of a Will, especially if it concerns Land; confirm a Title to Land, &c. though one hath loft his Writings by which he should make out his Title; make Conveyances, defective through Fraud or Miftake, good and perfect; enforce the Incolment of a Deed, if there is need for it; force Men to come to an Account with each other; avoid the Bar of an Action by Reason of the Starute of Limitations; decree for Things in Action upon Affignment to an Affignee upon Confideration, Sc. (\*) In fuch like Cases, the Court may, (\*) Crompt. without any Regard to Form or Mispleading, Jur. 42. b. proceed to a Decree, according to Equity and 1 Rol. Abr. 372. good Conscience.

Note; It has been held, that a Court of Equity could not decree against a Maxim of Law, 1 Rol. Abr. 376. and therefore it has been adjudged that one Executor could not compel the other to account. 1 Rol. Rep. 263. And that one Jointsenant could not sue his Companion. 1 Rol. Abr.

Of the Court of Chancety.

without Remedy. I Rol. Abr. 375. Where the Lessor entred upon the Lessee, and suspended his Rent, it was held that he had no Remedy in Equity. Lat. 149. So where the Party became remediles by his own Act, as by paying Money without an Acquittance. I Rol. Abr. 374. So where one made a Promise for valuable Consideration to make a Lease; and it was held that the Party could not sue on this Promise in Equity, because he might have an Action on the Case. I Rol. Abr. 380. But all these Resolutions in the Common Law Courts have been long since exploded, and the constant Practice is now otherwise.

This Court will not retain a Suit by English Bill under 10 l. Value, except in Cases of Charity; nor under the Value of 40.5. per Ann. in Lands, except it be for a Rent-Service, &c.

This Court also will restrain other Courts that exceed their Jurisdiction, and remove the Suit to itself by Certiorari; but it will not give Relief where the Substance of the Suit tends to the Overthrow of an Act of Parliament made for the publick Peace, or to the Overthrow of any fundamental Point of the Common Law, or to take from other Courts their peculiar Jurisdiction; though Judgments and Sentences in other Courts may be examined in Equity. [See the 4 H. 4. c. 23. and upon that Stat. Dr. & Stud. Dial. I. c. 18. 15 H. 6. c. 4. and the 3 Inft. 119, 123, 124, 4 Inft. 84, 85, 86, 87. 1 Danv. 745 to 766.] Decrees of this Court are equal to Judgments at Law, and their Execution as effectual or more fo. Morrise v. The Bank of England, Cases temp. Talbot 217, &c. Precedents in Chan. 179.

It is now the established Practice, that this Court has Power to give Relief after a Judgment at Law. Vide 3 Inst. 123. 4 Inst. 36, 91. Dal. 81. Moor 836. Pl. 1129. 916. Pl. 1300. 1 Leon. 241. 2 Leon. 115. 3 Leon. 18. 2 Brownl. 97. Godb. 244. 1 Rol. Rep. 71, 72, 252. 2 Bulst. 194, 284. 3 Bulst. 118, 120. Lit. Rep. 37. Cro. Jac. 335.

J

344. March 54, 83. Gro. Car. 595, 596. Stil. 27. 1 Sid. 463. 1 Mod. 60. Hard. 23, 123. 2 Bulft.

301, 302. 3 Bulft. 115. 1 Lev. 2415.

It can bind the Person, and † sequester the † Sequestrations were first introduced by

Sir Nich. Bacon in Queen Elizabeth's Reign, before which this Court found fome Difficulty in entorcing its Decrees, and for some Time after was controlled by the Common Law Courts. Vide 4 Inst. 84. 1 Rol. Rep. 86. 3 Bulft. 34. 1 Rol. Rep. 190. Lit. Rep. 166. Cro. Jac. 341. If Sequestrations were taken away, the Justice of this Court would be clustery, and there would be no effectual Means of bringing Suitors to the Fruit of their Suits So that they are a necessary Process of this Court. Mich. 19 Car. 2. Hide against Pettit.

If a Person sues in Equity and at Daw for the same Thing, the Practice is either to dismiss his Bill, or oblige him to make his Election. Vide Cary 71. But he may proceed in Equity for Mesne Profits, and in Ejectment at Law for Posession of the Lands. 1 Vern. 105.

Equity will not fuffer a Penalty to be demanded, if the Party will perform that for the Non-performance of which the Penalty is given.

2 Chan. Ca. 88.

It will not affift a Forfeiture. Vide 2 Vern. 127. When a Parson brings a Bill for Tithes, he must

waive the Forfeiture. 1 Vern. 60.

Equity will not give Relief in Matters proper by Quo Warranto, or Mandamus in the King's Bench. Mich. 1705. Attorney General and Reynolds & al.

Nor will it suffer a Party under Pretence of a Trust, or any other of its own Notions, to elude a beneficial Law. Pasch. 1706. Attorn. Gen. and

Hindley.

It will give Relief in Matters where the Party may recover Damages at Law. Hodges and Eve-

rard, Cases in Equity 132.

Will quiet a voluntary Devisee in the Possession of his Lands. Hill. 1702. Woodgate and Wood-

gate.

t

.

5:

Will compel a Discovery of Goods in the Hands of a third Person, in order to subject them to a Judgment. Mich. 1705. Taylor and Hill.

May

May vacate Letters Patent obtained by Fraud-Attorney General v. Vernou, 1 Vern. 277.

Will relieve against an indirect Conveyance, though executed by Deed and Fine. Mich. 1693. Woodhouse and Brayfield, 2 Vern. 307.

It may fet aside a Will for Fraud or Circumvention. Mich. 1700. Welby and Thornaugh.

Bur it has fince been decreed in the House of Lords, that a Will of a Real Estate could not be fet aside in a Court of Equity for Fraud or Imposition, but must be tried at Law on Devastavit vel non, being Matter proper for a Jury. July 28th 1728. Bramsby and Kerridge.

Let us now consider the Jurisdiction of Chancery in foreign Parts.

And here we may observe, That the Chantery will decree one Joint tenant of Lande in Ireland his Share, of the Profits, though it cannot award a Commission to make Partition of Lands which lie in Ireland. Hill. 27 Car. 2. Carrwright and Pettus, 2 Chan. Ca. 214.

An Annuity out of Lands in Ireland obtained by Fraud here relieved against, the Parties being here. Mich. 1682. between the Earl of Arglasse and Muschamp, 1 Vern. 77. 1 Vern. 135. S. C. And the former Resolution affirm'd by North

L. K. upon a Re-hearing.

So of a Contract made here for Land which lay in Ireland, between Archer and Preston, and

cited by the L. C. 1 Vern. 77.

If a Trustee of Lands which lie in Ireland lives here, Chancery may decree the Trust. Mich. 1686. between the Earl of Kildare and Sir Morrice Eustace and Fitzgerald, 1 Vern.

Its Jurisdiction over the Island of Sarke. Vide 1 Vern. 494. Pasch. 1705. Toller and Carteres.

1 Chan. Ca. 221.

A Bill may be brought in Chancery to foreclose Mortgage on Lands out of the Jurisdiction

of

u

Co

itt

Ox

of the Court, if the Person be within it. Chancery agit in Personam, & non in rem. Vide 1 Salk. 404.

The Chancery has a concurrent Jurisdiction with the Admiralty in Marine Contracts. All-

port v. Thomas, Gilb. 227, 228.

Proceed we in the next Place to consider the Jurisdiction of the Court of Equity in the Exchequer, and how it interferes with Chancery.

Where a Person may bring a new Bill in Charsery, rhough his Bill in the Exchequer for the same Matter be dismiss'd. Vide 1 Chan. Ca. 155.

If the Mortgagee brings a Bill in the Exchequer to foreclose, the Mortgagor may bring a Bill in Chancery to redeem. Hill. 1683. between the Barl of Nowbourgh and Wren, 1 Vern. 220.

After a Decree in the Exchequer, which was confirmed in the House of Lords, a new Bill brought in Chancery. Mich. 1699. Joy & al., and Braine, Vide Cases in Equity 135.

Matters relating to Extents in Aid are propery cognizable in the Exchequer. Pasch. 1701. Brown and Trant, 2 Vern. 426. Sed vide 1 Vern.

69. Capel and Brewer.

Let us now observe in the last Place how far hancery will exert a Jurisdiction in Matters ognizable in inferior Courts, as the Ecclesiastical ourts, University Courts, Chester, Durham, &c.

Chancery in some Matters has a concurring furisdiction with the spiritual Courts; and in many Cases their Judgments are subject to this Court. Pasch. 23 Car. 2. between Vanbrough and Cock, 1 Chan. Ca. 200.

It has a concurrent Jurischichton with the Spiritual Court, in allowing Alimony, &c. Lady Oxenden against Sir John Oxenden, Gilb. 1, 152, &c.

16

Ourt, and afterwards in Chancery, the Suit depending in the Ecclesiastical Court cannot be pleaded in Bar, for there is no such Security for the Infant's Advantage as here, especially as to Interest, and bringing in an Account. Hill. 33 Car. 2. between Howell and Waldron, 2 Chan. Ea. 85.

A Bill is proper in Equity for a Distribution of an Intestate's personal Estate. Pasch. 34. Car. 2. between Pamplin and Green, 2 Chan.

Ca. 95. 2 Vent. 362. S. P.

An Account may be decreed in Chancery after an Account passed in the Spiritual Court. Pasch. 1688. between Bissell and Axtell, 2 Vern. 47.

But a Will relating to a perfonal Estate, though it is objected that it was obtained by Fraud, yet it is not examinable in Chancery after Probate in the Spiritual Court. Archer and Mosse, 2 Vern. 8. Nelson and Oldfield, 2 Vern. 76.

What Jurisdiction the University Courts have, wide v Vern. 212. Hill. 36 Car. 2. Stephens and Dr. Berry. 2 Vent. 362, Hill. 36 Car. 2. Draper

and Dr. Crowther.

A Claim of Privilege must be by way of Plea, but it need not be upon Oath: 1 Chan. Ca. 237. The Privilege of an inferior Court cannot be objected to at the Hearing, but must be pleaded. 2 Vern. 484.

Chancery has a Jurisdiction over inferior Courts

of Equity.

A Man cannot fue in the Chancery of Chester for a Thing which in Interest concerns the Chancellor there. Between Sir John Egerton and

Lord Derby, 12 Co. 113.

If a Man hath Cause to complain in Equity of a Matter arising within the County Palatine of Chester, if the Desendant lives out of the County Palatine, he may be sucd in the Chancery here.

12 Co. 113.

A Bill was brought for an Account of the Profits of Lands which the Defendant had received

n

rac

128

Pa

all

And

Dffi

Que

oun

in Trust for the Plaintiff, and for Money received on Bonds belonging to the Plaintiff, and for Writings, &c. The Defendant pleaded, that the Lands lay in Chesbire, and that he lived in Chesbire, in the County Palatine of Chester, and therefore not within the Jurisdiction of this Court. Precedents were searched, and on View of them a Master certified, that though the Privilege of the Counties Palatine was allowable, yet it was between Parties dwelling in the same County, and for Lands there: But the Plea was over-ruled. Hill. 14 Car. 2. between Edgworth and Davies, 1 Chan. Ca. 40.

#### CHAP. II.

Concerning the Office of Lord Chancellor, Master of the Rolls, and the rest of the Officers.

THE Lord Chancellor (à Cancellando, from his Power to cancel Letters Patent, being he highest Point of his Jurisdiction) or Lord Leeper, is the Chief Judge of the Court of Chancery. 4 Inst. 84, 88. Lambara's Archaion.

8. Eles. Obs. Office L. C. 45. Crompt. Jur. 41.

.

3

\*

1

f

£

9 :

2.

)-

d

n

This is an Office of the greatest Weight and ower, and requires not only the most uncorapted Probity, but consummate Abilities, Peneration and Discernment: And it may so far be raced up into Ages past, as to discover that it has still been an Office of the first Rank. Rot. Parl. 14 Ed. 4. Num. 26. The Chancellor is alled the Chief Judge of the Realm. Eles. 3, 4. And the Romans called him that had such an Office under their Emperors, by the Name of Quastor Sacri Palatii, and he was to be prooundly skill'd in the Divine and Human Laws,

that so he might be able to explain them for

the People.

With Regard to the Antiquity of this great Officer, it is observable, that both the British and Saxon Kings had their Chancellors. 4 Inst. And Dugdale mentions the Names of such Chancellors, as he could meet with from good Authorities throughout the Reigns of the successive Kings of the Saxon Race, until the Norman Conquest. Of these Unwona is the first, who is stilled Cancellarius to Offa, King of the Mercians, who began his Reign in the Year 758. Dugd. 33. Jan. Anglorum 127. Mat. Paris, in Vit. Abbatum, pag. 22. n. 10. & pag. 23. n. 20. Anno 758.

The Election, or Creation of Chancellors and Keepers, was anciently of more than one Sort, and also of Men of divers Degrees and Qualities.

The Constitution of Chancellor hath been of two Sorts, viz. by Letters Patent, which hath been but rarely used; and by Delivery of the Great Seal, which Delivery is to be entred upon Record; wherein it is to be observed, that the Keeper of the Great Seal had the Seal delivered in divers Manners. It was delivered to the Chancellor by the King; and immediately he took an Oath for the faithful Exercising the Office of Chancellor, and then he sealed Writs therewith alone; and it was deliver'd to the Keeper without Oath, and therefore he did not commonly seal therewith but in Presence of some of the Masters in Chancery. Vide 4 Inst. 87.

And for the most part our Chancellors have been chosen by the King, durante beneplacito, and put in Possession of their Office by the Delivery of the Seal; though it is said, that in the Time of King Henry II. the Manner of ordaining a Chancellor was by hanging the Great Seal of England about the Neck of the Chancellor

elect. Camd. 131.

I shall not enter into a long Discourse of those Distinctions, that have been taken Notice of by some

70

at

B St. n-

0-

ve 272

ho

7-

8.

172 0.

nd

rt,

es.

of

th

he

ed

at

le-

tò

ely.

he

its

hè

ot

ne

ve

10,

e-

he

ineal or

ofe by ne fome Authors, with Respect to the Office and Authority of the Lord Chancellor and Keeper: For all Questions are now taken away by the Stat. 5 Eliz. and at this Day there being but \* one \*King Henrys Great Seal, there cannot be both a Lord Chan-Seals, one of cellor and a Lord Keeper of the Great Seal at Gold, which he one Time, because both are but one Office, as is deliver'd to the declared by the faid Act. Vide 4 Inst. 88. And Bishop of Durthe taking away the Seal determines the Office. him Lord I Sid. 338.

Chancellor; another of fil-

re, which he delivered to the Bishop of London to keep. And note, That Hiltorians often confound Chancellors and Keepers one with the other.

The Chancellor hath two Powers, one Ordinary, the other Extraordinary. In his Ordinary Power he holds Plea of Matters, according to the Course of the Common Law: And in the Extraordinary Power he judgeth according to Equity, moderating the Rigour of the Common Law; and governing his Judgment by the Law of Nature and Conscience; ordering all Things uxta equum & bonum: And having the King's Power in these Matters, he hath been called the Keeper of the King's Conscience.

With Regard to the Commencement of his quitable Authority, it seems to be untraceable, nd to have Prescription for its Parent. Co. 12 Rep. 113. 2 Inft. 552, 553, 554. 4 Inft. 78, 79. Low. 242. Hist. Chan. \_\_\_\_ sed vide Lamb.

Archaion. 62, 63. Dugd. 36.

He who bears this high Office is stiled Lord ligh Chancellor of Great Britain, which is the ighest Honour of the Long Robe; and he is ot made by Letters Patent, but per traditionem nagni Sigilli sibi per Dominum Regem; and by aking the following Oath. 4 Inft. 87.

The Oath of a Lord Chancellor, or Keeper.

OU shall swear, that well and truly you shall serve our Sovereign Lord the King and his People in the Office of Chancellor, or Keeper of the Great Seal of Great Britain, whereunto you are admitted: And you shall do Right to all manner of People, as well to poor as to rich, according to the Laws and Usages of this Realm: And truly you shall counsel the King, and his Counsel you shall keep. And you shall not know, nor suffer the Hurt and Disheriting of the King; nor that the Rights of the Crown be decreased by any Means as far forth as you may it let. if you may not let it, you shall make it clearly and exprestly to be known to the King, with your true Advice and Counsel therein; and that you hall do and purchase the King's Profit in all that you reasonably may.

So help you God, &c.

When the Chancellor hath received the Seal from the King, there is an Entry made upon the Close Roll in the Court of Chancery, what Day, and in whose Presence the Great Seal was delivered, which is all that is requisite. Cama.

180. Hift. Chanc.

A Chancellor may be made so at Will, by Patent, but 'tis said not for Life; for being an ancient Office, it ought to be granted as has been accustom'd. 4 Inst. 87. But Sir Edward Hide, afterwards Earl of Clarendon, had a Patent to be Lord Chancellor for Life; though he was dismiss'd from that Office, and the Patent declared void. I Sid. 338.

This high Officer, the Chancellor, is to fee that all Things conserning the Court of Chancery be directed and disposed according to his Advice; and he may hold Plea as well Extra

0

20

terminum, as Infra, in Matters concerning either the Ordinary or Extraordinary Jurisdiction. And this Court being always open, a Man may have Process issued at any Time. Broke 116. Cromps.

Jur. 42. Stat. 4 Ed. 4. cap. 21.

T

dl

15

of

14

7-

6-

2:

is

w,

3;

by.

24

ly

ur

011

at

C.

eal

on

at

128

ta.

a.

B.

en

æ,

10

725

le-

ce

ce-

his rs And it belongeth to the Chancellor, ratione Officit, to pronounce the Cause of Summons at the Beginning of a Parliament; and he is to be present at all the King's Councils, and is Prolocutor in the House of Lords by Prescription, &c. Elest. To him belongeth the Constitution and Appointment of Justices of the Peace, and Quorum, by Commission throughout all England. Lamb. Fust. lib. 1. cap. 5. And he is a Conservor and Justice of the Peace throughout all

England, by Prescription. Eles.

He is to vifit all Hospitals and free Chapels of the King's Foundation. Co. Lit. 96, 344. And if the Ordinary offers to visit them, a Prohibition lies. F. N. B. 42. a. He receives and keeps all Bishopricks and Baronies void, and fallen into the King's Hands; and it is his Privilege to prefent to all the King's Benefices of or under Twenty Pounds in the King's Books, where the King is Patron in Right of his Crown; but not f the King hath them by a Collateral Title, as by Laple; for then the King himself shall prelent. See 22 Ed. 4. cap. 18. Wood's Inst. 460. And yet these Presentments must pass under the Great Seal. Plowd. 528. 38 Ed. 3. F.N.B. 35 K. But it appears by 22 Ed. 4. 18. that it belongs o the Chancellor, virtute Officii, to present to ill the King's Churches under the yearly Value of forty Marks: And no Doubt the Chancellor's Authority, in this Behalf, is enlarged by the Grants and Letters Patent of several of our Kings.

And the Chancellor may not only dispose and order the King's Chaplains as he pleaseth, but as Lord Chancellor may keep and retain three Chaplains attendant on his Person, who may pur-

C 3 chafe

chase Licences or Dispensations to have and keep two Benefices, with Cure of Souls. 21 H. 8. c. 13.

By the Stat. of 27 Hen. 8. cap. 11. the Lord Chancellor may pass Things through the Seals without paying any Fees—And to the Chancellor's Office, in Process of Time, great Authority hath been added by divers Statutes.

After a Statute of 5 Eliz. during a Vacancy upon the Death of Sir Christopher Hatton, the Great Seal was delivered to Lord Burleigh, Lord Treasurer Hunsdon, and two other Lords; and a Commission to hear Causes was given to four Judges, Clinch, Gaudy, Windham and Periam. Hist. Chan. 70. And by I W. & M. Seff. 1. cap. 21. Commissioners to be appointed to execute the Office of Lord Chancellor, or Lord Keeper, may use and exercise like Jurisdiction, &c. which the Lord Chancellor or Lord Keeper of Right ought to use, as belonging to their Offices, or otherwise: And one Commiffioner may hear Motions, and give Orders touching interlocutory Proceedings, &c. Since this Statute, this high Office hath been several Times in Commission; tho' generally only on the Difmission of a Chancellor, 'till another was appointed.

The Lord Chancellor (or Lord Keeper) in case of Sickness, or extraordinary Business, may call some of the Judges to affish him. 4 Inst. 84, 88, 213. And such Judge so called or deputed may, in the Absence of the Chancellor, pronounce both interlocutory Orders and Decrees.

### Master of the Rolls.

† Fortescue cap 24, &c. Stat. 12 R. 2. cap. 2. THE Master of the Rolls, anciently called Guardein des Rolles, † Clericus Rotulerum, or Clerk of the Rolls, and now stiled in his Patent, Clericus parvæ Bagæ & Custos Rotulorum, &c. is Chief of the Twelve Masters in Chancery, and a very ancient Officer. His

Office

Office is grantable by Letters Patent, either for Life or at Will, at the Pleasure of the King. 4 Inst. 95, But at this time 'tis always for Life.

Both the Chancellor and the Master of the Rolls have been heretofore Spiritual Persons. And by a Patent of Edward III. the Master of the Rolls was appointed and installed in the House of the Rolls in Chancery-Lane, by the Lord Chancellor, which Manner of Induction and Installment continued as long as the Masters of the Rolls were of the Clergy, which may be proved by the Precedents of those Inrollments, and the Writs themselves extant of Record.

Elef. 36, 37.

1

1

The Mafter of the Rolls is by Virtue of his Office the Chief of the Masters in Chancery, as well as Chief Clerk of the Petty-Bag Office, and s a judicial Officer of the Court of Chancery; or, besides what he doth as Assistant to, or Assoiate with the Lord Chancellor when present, or Deputy to him when absent, many Causes are et down before him to hear and decree, which e usually doth on certain Days appointed, comonly in the Presence of one or more Masters Chancery, and sometimes in their Absence, nd either in Court, at his own House, or the hapel of the Rolls; and all such Orders and Decrees as are made by him, are drawn up and ntered as made per Curiam. Vide Crompt. Jur. 1. b. Stat. 3 Geo. 2. And he is the Keeper of ll Records, Judgments, Sentences and Decrees iven in Chancery. Elef. 36, 37.

In the Statute 12 R. 2. cap. 2. he is number'd mongst the greatest Officers and Magistrates of he Realm by the Name of Clerk of the Rolls, and before the Justices of either Bench, viz. It is enacted, that the Chancellor, Treasurer, and Keeper of the Privy Seal, the Steward of the King's House, the King's Chamberlain, the Clerk of the Rolls, Justices of both Benches, &c. shall be called to the Naming of Justices of Peace, Sheriffs, &c. and be sworn to do the same faith-

4

fully,

#### Df the Officers.

fully, and without Affection. And by Virtue of his Office he is a general Conservator of the Peace throughout the Kingdom; but 'tis said he taketh Recognizances, and issues out Process of the Peace, &c. not as incident to his Office, but by Prescription. But Quere if this be not incident to his Office as Justice of Peace. Vide Lamb. Just. lib. 1. fol. 12.

His Oath is as follows:

YOU shall fwear, that well and faithfully you Shall serve our Sovereign Lord the King and his People in the Office of Clerk of the Rolls in Chancery, to which you be attitled. And you hall not affent to, or procure the King's Disherision nor Damage, nor shall you do, or procure to be done any Fraud to any Man's Wrong, nor. any Thing touching the keeping of the Great Seal. And you shall lawfully counsel in Things that touch the King, when you shall be thereunto required; and the Council which you shall know touching the King you shall conceal. And if you know the King's Disherison, perpetual Damage or Fraud to be done upon the Things which touch the Keeping of the Seal, you hall put your lawful Power to repress and amend it; and if you cannot do the same, you shall certify the Chancellor, or others, which may do the same to be amended, to your Intent.

As God you help, &c.

It appears by the Statute 14 Hen. 8. cap. 8. that the Master of the Rolls hath the giving of the Offices of the Six Clerks in Chancery. And he hath likewise the Appointment of the Clerks of the Petry-Bag Office; the two chief Examiners, the Usber of the Court of Chancery, &c. And he hath divers Prerogatives by Statutes, Commission, and Prescription. Eles. 36, 37; vide Gromps. Jur. 41. b.

## Masters in Chancery.

THESE Officers are Twelve in Number, whereof the Master of the Rolls is one,

viz. the Chief. 2 Inft. 407. 4 Inft. 82.

They are Affistants or Affociates to the Chancellor, and Master of the Rolls, and sit with them in Court by Turns, usually two at a Time: And References touching Accounts, Matters of Practice, &c. are made to them, upon which they make their Reports. And they also administer Oaths, take Affidavits, and Acknowledgments

of Deeds, Recognizances, &c.

e

,,,

f

ł

They were formerly stiled Clerici de prima forma, and were to be grave and ancient Clerks; skilful, and long experienced in the Practice of the Court: And by special Appointment of Parliament these Twelve Clerks, or Masters, were made Coadjutors with the Chancellor, and had equal Authority with him in forming the Brevia Magistralia; for unless they all agreed they were to go to Parliament: But in all other Cases, by the Constitution of the Court of Chancery, they are Affistants or Affociates to the Chancellor and Master of the Rolls. And they were anciently Members of the King's Court, and allowed Robes out of the King's Wardrobe, and dieted as a Part of the Houshold, for whom special Purveyance was made; and as in Respect of their being Counsellors, and Affistants or Affociates to the Chancellor and Master of the Rolls, they have the Honour to fit upon the Bench with them in open Court; so in Respect of their having been Members of the King's Court, they attend the House of Lords, and have a Right to affift at the Coronation of our Kings. Rot. Parl. 10 E. 3. Hift. Chan. 30, 32, 43. Vide Fleta, lib. 2, C. 13.

The latter Name of Masters of the Chancery they retain at this Day; asalfo their ancient Prece-

dency

dency before all other Clerks. And now a Recognizance acknowledged before any of them, and certified under his Hand, is of that Authority, that it is a Matter of Record, and as effectual as if it had been acknowledged in open Court. And all Deeds or Indentures, which are to be inrolled in Chancery, must be acknowledged before them. And every Defendant in any Bill exhibited against him in this Court, must swear his Answer before one of them, except the Defendant live in the Country; when his Answer is taken by Commissioners.

Their Oath is almost the same with that of

the Master of the Rolls.

### The Oath of a Master in Chancery.

O U hall swear that well and truly you shall serve our sovereign Lord the King, and bis People in the Office of one of the Masters in Chancery, to which you are called. You hall not affent to, nor procure the Disinheritance or perpetual Damage of the King to your Power: No Fraud shall you do, or cause to be done wrongfully to any of his People, nor any thing that toucheth his Seal. And lawfully you shall counsel in the Things which touch the King, when you Shall be thereuntto required; and the Council that you shall give touching his Majesty, you shall not disclose. And if you know any Thing that toucheth the Difinherison or Damage of the King, or Fraud to be done about any Thing that toucheth the keeping of the Seal, you shall put your lawful Power to redress and amend the same; and if that you cannot do it, you shall advise the Lord Chancellor, or Keeper of the Seal, or other which may amend the same, to your Power.

So help you God, and by the Contents of this Book.

By the Stat. 13 Car. 2. A publick Office is to be kept near the Rolls, for the Masters in Chancery, in which they or some or one of them, shall constantly attend for the administring of Oaths, taking Captions of Deeds and Recognizances, and Dispatch of all Matters incident to their Office (References upon Accounts and insufficient Answers only excepted) from seven of the Clock in the Morning till Twelve at Noon, and from Two in the Asternoon until six at Night: And by this Act there are Fees appointed; and Tables of the Fees are to be put up in their Office, &c.

The rest of their Business will appear hereaf-

er under References, Reports, &c.

As to Masters extraordinary for the taking of Masters extra-Assistant Sc. in the Country; you must get a ordinary.

Certificate figned by three Justices of the Peace, or Counsellors, whereof a Mayor may be one, or a Doctor of Divinity; which Certificate may be to the Effect following, viz.

o the Right Honourable the Lord High Chancellor of Great Britain.

We whose Names are hereunto subscribed, viz. . B. of the Parish of C. in the County of D. And . F. of the Parish of G. in the County of H. And . H. of the Parish of L. in the County of M. being bree of his Majesty's Justices of the Peace for the id County, do humbly certify your Lordship, That K. of the Parish of L. in the County aforesaid, a Person well qualified to be a Master in Chanery for taking of Affidavits in the said County; nd that there is occasion for a Master extraordieary in the faid Place where he dwells, there being never a Master extraordinary near that Place; end that the faid J. K. is a Person well affected to his present Majesty and Government. Witness our Hands this --- Day of --- in the Year of our Lord one thousand seven hundred and forty, and

#### Of the Officers.

in the fourteenth Year of the Reign of his Majesty King George the Second.

A. B. E. F. A. H.

This Certificate you carry to one of my Lord Chancellor's Secretaries, who procures a Fiat to be figned under the Certificate, by his Lordship; which you carry to the Clerk of the Crown, and he makes you out a Commission appointing such Person to be a Master in Chancery extraordinary.—The whole Fees thereof come to about seven Pounds. And when the Master in Chancery extraordinary has got the Commission, he is obliged within a Month after the Date thereof, to take the Oaths of Allegiance and Supremacy.

If the Person to be appointed a Master Extraordinary is to be sworn in as such in the Country; the Clerk of the Crown makes out a Commission to Commissioners, with the Oaths of Allegiance and Supremacy, to be administred to the Party, which being administred, the Commissioners return the Commission with an Attestation of the Execution on the Back thereof, signed by them, to the Clerk of the Crown; who thereupon makes out a Certificate on Double Six-penny Stamp Paper, and signs the same: And the Expence, where it is by Commission in the Country, amounts to near 9 l.

#### Six Clerks.

THESE Officers are of ancient Continuance, and they were heretofore Spiritual Persons, as may appear by the Stat. 14 & 15 H. 8.—
fince the Reign of R. 2. the Reputation of their Office hath so much increased, that they have been specially affign'd amongst other Officers to attend at the King's Coronation, as appears by the Records of the Herald's Office.

They

They are principally concerned in Matters of Equity; and transact and file all Proceedings by Bill and Answer; and also iffue some Patents that pals the Great Seal, as Pardons of Men for Chancemedley, Patents for Ambassadors, Sheriffs Patents, and some others: And all these Matters are transacted by their Under-Clerks, or others by them appointed. They likewife fign all Office-Copies in order to be read in Court, and also Certificates, and attend upon the Court in Term, by two at a Time, at Westminster, and there read the Pleadings.

The Bufiness of the Office is done by their Under Clerks, each of which has a Seat in the Office, and whereof every Six Clerk has a certain Number, usually about † Ten, besides two Formerly there Waiting Clerks in each Division; all which are were 90 sworm accountable to their respective Six Clerks for the but they are

Bufiness they transact.

At this Day they employ Deputies in their Number of 60. Absence (usually a sworn Clerk, or a Waiting Clerk of their own Division) to file the Proceedings, and to fign Office-Copies and Certificates.

Formerly there was an Order for dividing the Ord. Canc. 107 Bufiness among the Six Clerks, which being found to be inconvenient to the Suitors, was vacated and discharged: And all Clients are now at Liberty to choose their own Attornies and

Clerks. Ord. Canc. 157.

•

D

8

n

Note; Besides the Fees in the Six Clerks Office there are also several others which are claimed and taken by the Six Clerks as Comptrollers of the Hanaper, and for inrolling the Warrants for Patents, Grants and other Matters passing under the Great Seal, and returned into the Hanaper Office. Moreover the Six Clerks, and the Three Clerks of the Petty Bag are by Letters Patent granted by Queen Eliz. in the 16th Year of her Reign, incorporated by the Name and Stile of the Clerks of the Inrollments of the High Court of Chancery, and have under them two Deputies who officiate.

now reduced to the ancient

The

The Oath of the Six Clerks in Chancery.

YOU shall swear, that well and truly you shall serve the King and his People, in the Office of one of the Six Clerks of Chancery, whereunto you are now admitted; and well and justly order yourself in the same, and according to your Skill and Learning, truly counsel them that you shall be retained with. And you hall not affent to any Fraud or Deceit to be bad or done by you, or any other by your Consent, in any of the King's Records whereunto you have recourse; but well and truly you shall entreat the same. And you shall not absent yourself willingly whereby the King's Business or any other shall be undone or hinder-ed, without special Licence of the Master of the Rolls or his Deputy for the Time being.

So help you God, &c.

The Six Clerk's Office is in Chancery Lane.

## Of Sworn Clerks and Waiting Clerks.

See the Stat. 18 E. 3. to be taken not by the Six Clerks other Officers ry, of the like Quality, and their Servants alfo. † A Waiting Clerk's Seat and after two

more a fworn Clerk's Seat.

· For this Oath IN order to be qualified for Clerks in Court, one must be articled to a \* fworn Clerk, and ferve him the Years in the Six Clerks Office, and at the Expiration of their Clerkships, they only, but by all are to be examined by the Master of the Rolls, and if approved of, they are thereupon admitted, in the Chance- and fworn in before his Honour, to the good and faithful Execution of their Office, and thereby become fworn Clerks of this Court, and act as fuch, and are allowed to have Freeholds [ i. e. Seats] in the Six Clerks Office, and to vote for may be purcha- Parliament Men in Middlesex. And all Suitors of fed at the End this Court must employ one of the fworn Clerks, of three Years, or one of the twelve Waiting Clerks practising in the faid Office to act as Clerk in Court.

They

But a Waiting Clerk cannot take an articled Clerk.

They make out all Writs both Special and Common, and all Process (except Subpenas) in all Caufes, depending on the Equity Side of this Court, wherein they are respectively employ'd. They claim a Right to, and as occasion requires, have the Custody of all Records relating to Caufes there, of which Records they make Copies for their Clients. They also ingross Bills, Anfwers, &c. (if not done by their Clients or Solicitors) and attend the Court and Masters in Chancery as occasion requires, and draw and inroll the Decrees of the faid Court, and also make Copies of all Depositions taken by Commission in the Country, &c. And they give their Attendance not only in Term-Time, but also in the Vacation, by themfelves or Agents.

All Office Copies of Proceedings made by them ire to contain fifteen Lines in every Sheet, and fix Words in every Line, writ orderly; and are to be figned with the Name of the Six Clerk to whom they belong, by himself or Deputy, or otherwise they shall not be made use of in

Court. Ord. Canc. 83.

No Under-Clerk is to be deprived or suspendd but by Order of the Lord Chanceller, &c. Ord. Canc. 161. By this Order likewise the ees for Copies of Bills, Answers, Pleas, &c. But for these nd for Writs, Commissions, and Exemplifica- Fees, vide Orions, are limited; as to be divided between the der in Chan. ix Clerks and Under Clerks; and the Under-28 Nov. 1743. lerks are to pay, and be accountable to the Six lerks for their Fees, or give Notes of the Name nd Place of Abode of Clients in Arrear, in their Discharge.

None ought to fit or write in the Six Clerks Office but the Six Clerks, sworn Under-Clerks, nd Waiting Clerks, and their Clerks or Agents; nd no Master of the Court is to deliver any Inswer, Plea, &c. to any Person but such Clerks; ind no Six Clerk shall deliver any Bill, Answer, Sc. to any Person but a sworn Under-Clerk, or Waiting-Clerk, or their respective Agents; also

no sworn Clerk is to deliver any Bill or Answer, Sc. other than to his respective Clerk or Agent, for whom he shall answer. Ord. Canc. 222, 223, Sc.

## Of the Register.

THE Register is a Place of great Importance in this Court. He holds by Letters Patent, and hath several Deputy Registers under him, who sit in Court by Turns, and take Notes of all Orders and Decrees made in Court; and accordingly draw up the Orders, which are to be enter'd in this Office; but before they be enter'd they are to be passed, [i. e. to have the Hand or Mark of a Deputy Register to them.]

Rules and Atachments are also to be entred in his Office, by one of the Entring Clerks. See

more hereafter.

In his Office are filed all Reports from the Masters upon References, and all Exceptions

taken to any of the faid Reports.

The Registers are not to enter any Plea or Demurrer in the Paper, unless the Order for it be brought to be drawn up at least four Days after such Order is pronounced for arguing such Plea, or Demurrer, &c. and afterwards no Alteration shall be made.

Minutes of Decrees, &c. taken by the Registers, are to be read in open Court, that if there be any Mistakes, the Counsel may speak for rectifying them whilst fresh in Memory. Ord.

Canc. 213.

By Stat. 12 Geo. 1. cap. 32. two Orders of the Court of Chancery, in the Act fet forth, are confirmed and thereby (inter alia) it is directed, that all Securities belonging to the Suitors of the Court to be delivered out of the Bank, are to be certified by the Register to the Master, what Security is to be delivered out, together with the Numbers, Dates, and Summs of such Security

Securities, and the Name of the Cause wherein

the same is to be delivered out.

0

n

t

18

d,

n

įį.

21

or

d.

he

re

od,

of

irc

er, er

ch

:N.

When Stock is likewise to be transferred to Buitors, the Register is in like Manner to cer-

And when it is to be paid out of the Bank to Suitors, &c. the Chequer Note on the Bank for Payment must be counterfign'd by the Register.

The Register's Office is in Symond's Inn in Chancery-Lane.

## Master of the Subpoena Office.

N this Office are made out all Writs of Subpana, both Special and Common. The Ofce is granted by Letters Patent: And the Bufies is transacted by Deputies.

The Office is in Chancery-Lane.

## Register of Affidavits.

HIS Officer files and registers Affidavits, and makes Copies of the same, which are ned by himself or his Deputy; and he also ues Certificates under his or his Deputy's Hand, en required on any extraordinary Occasion.

Affidavits in this Court are generally to be fibefore exhibited in Court, or produced to ound any Orders, Writs, &c. Likewise Copies to be made by the Register; and no Coun-, Clerk, &c. Shall give any Affidavit in Evince that is not filed and register'd in the Afavit Office. Ord. Canc. 9.

This Office is also granted by Letters Patent.

he Affidavit Office is in Symond's Inn in Chancery-Lane.

D

no sworn Clerk is to deliver any Bill or Answer; Sc. other than to his respective Clerk or Agent, for whom he shall answer. Ord. Canc. 222, 223, Sc.

## Of the Register.

THE Register is a Place of great Importance in this Court. He holds by Letters Patent, and hath several Deputy Registers under him, who sit in Court by Turns, and take Notes of all Orders and Decrees made in Court; and accordingly draw up the Orders, which are to be enter'd in this Office; but before they be enter'd they are to be passed, [i. e. to have the Hand or Mark of a Deputy Register to them.]

Rules and Atachments are also to be entred in his Office, by one of the Entring Clerks. See

more hereafter.

In his Office are filed all Reports from the Masters upon References, and all Exceptions

taken to any of the faid Reports.

The Registers are not to enter any Plea or Demurrer in the Paper, unless the Order for it be brought to be drawn up at least four Days after such Order is pronounced for arguing such Plea, or Demurrer, &c. and afterwards no Alteration shall be made,

Minutes of Decrees, &c. taken by the Regiflers, are to be read in open Court, that if there be any Mistakes, the Counsel may speak for rectifying them whilst fresh in Memory. Ord.

Canc. 213.

By Stat. 12 Geo. 1. cap. 32. two Orders of the Court of Chancery, in the Act fet forth, are confirmed and thereby (inter alia) it is directed, that all Securities belonging to the Suitors of the Court to be delivered out of the Bank, are to be certified by the Register to the Master, what Security is to be delivered out, together with the Numbers, Dates, and Summs of such Security

Securities, and the Name of the Cause wherein the same is to be delivered out.

When Stock is likewise to be transferred to Suitors, the Register is in like Manner to cer-

And when it is to be paid out of the Bank to Suitors, &c. the Chequer Note on the Bank for Payment must be counterfign'd by the Register.

The Register's Office is in Symond's Inn in Chancery-Lane.

10

e

è

18

e

ne

i.

re

10

d.

he

re

ed,

ot

arc

er, ner

ch

cu.

# Mafter of the Subpœna Office.

N this Office are made out all Writs of Subpana, both Special and Common. The Ofice is granted by Letters Patent: And the Busies is transacted by Deputies.

The Office is in Chancery-Lane.

## Register of Affidavits.

THIS Officer files and registers Affidavits, and makes Copies of the same, which are gned by himself or his Deputy; and he also ues Certificates under his or his Deputy's Hand, hen required on any extraordinary Occasion.

Affidavits in this Court are generally to be fid before exhibited in Court, or produced to ound any Orders, Writs, &c. Likewife Copies to be made by the Register; and no Count, Clerk, &c. shall give any Affidavit in Evince that is not filed and register'd in the Aflavit Office. Ord. Canc. 9.

This Office is also granted by Letters Patent.

The Affidavit Office is in Symond's Inn in Chancery-Lane.

D

### Of the Examiners.

THESE Officers are Two in Number, and have under them feveral Deputies, and Copying Clerks: They by themselves, or Deputies, examine Witnesses produced on either Side (being first sworn by a Master on Interrogatories) take their Depositions, and make out Copies of them, and of the Interrogatories, where not by Commission in the Country. And as Occasion requires, they give Certificates, and attend the Court with any Deeds or Writings left in their Custody. And none but such Clerks as are sworn, or their Agents by them employed, shall make Copies of Depositions, &c. which are to be kept private in the Office 'till Publication be pass'd, &c.

### The Oath of the Examiners.

TO U shall swear well and truly after your Cunning and Learning, to execute the Office of one of the Examiners in the King's Court of Chancery whereunto you are admitted. And you shall duly, justly, and equally examine their Causes that shall be committed unto you, without any Favour of any Person or Persons to be kad, or doing otherwise than shall of Right appertain concerning the same. And you shall be attendant as well to further the King's Business, as also the same Causes, from Time to Time, as Need shall require: And you shall not publish or shew the Depositions you take to any Person before Publication in the Court, without the Warrant of the same Court.

So help you God, &c.

The Examiners Office is in the Rolls-Yards in Chancery-Lane.

Of.

# Of the Usher of the Court of Chancery.

THE Usher of the Chancery had formerly the Receiving and Custody of all Money orered to be deposited in Court, and paid it back gain by Order, for which Purpose he attended a the Court; which Business was by Order of the Court vested in the Masters in Chancery; but as taken from both the one and the other by at. 12 Geo. 1. and vested in the Accountant eneral.

e

f

n

e

ir

n,

pt

d,

ur

Sce

of

eir sbbe

ap-

be

ess,

as

07

be-

ar-

1,23

in

Of.

To the Usher it belongs to have the Carriage

Records; and by Order of Court, he or his \* This is done eputy is to \* deliver Parchment of due Pro- by the Clerk of rtion to the Under-Clerks for inrolling of De- the Chapel of the Rolls.

### Of the Accountant General.

E is a new Officer appointed by Parliament +, + Stat. 12 Geo. and stands in the Place of the Masters and 1. cap. 32. er, and shall do all such Matters and Things ting to the Delivery of the Suitors Money Effects into the Bank, and taking them out Order, and keeping Accounts with the nk, as by the Orders of the Court of Chany of the 26th of May, and the 4th of Novem-1725. are to be done by the Masters and her: And the Masters and Usher were to te up their Accounts with the Accountant eral, and pay into the Bank all Money, &c. aining in their Hands, to be placed to the ount of the Accountant General; also Mortes, Tallies and Securities in the Master's or er's Name in Trust for the Suitors, to be n'd to the Accountant General, &c. regages taken by the Direction of the Court, the Benefit of the Suitors, shall be taken in Name of the Accountant General, wherein particular Trust is to be specified; and the countant General shall not meddle with the D 2 actual

or Effects, but shall only keep the Account with the Bank; and the Bank is to be answerable for all Money received by them, and not the Accountant General, &c. Vide Stat. 12 Geo. 1.

cap. 32.

He holds his Office during the Pleasure of the Court; and the Court of Chancery hath Power to make further Regulations relating to his Office; and forging the Name of the Accountant General, &c. to any Certificate, in order to the receiving any of the Suitors Money, is by the said Statute made Felony.

The Accountant General's Office is in Symond's Inn in Chancery-Lane.

### Of the Cursitors.

THESE Officers are of a very ancient Institution; they are in Number Twenty-four, and were incorporated by Queen Elizabeth. They make out all Original Writs in Chancery returnable in C. B. &c. and amongst these the Business of the several Counties is severally distributed in the Stat. 18 Ed. 3. they are called Clerks of of Course; and their modern Oath is as follows.

### The Oath of a Curfitor.

TOU shall swear, that you shall well and truly serve our Sovereign Lord the King and his People in the Office of Cursitor, whereunto you are called. And that if you shall know any Fraud or Falshood procured or intended, to the abusing of the Great Seal; or to the Damage of Prejudice of the King, you shall do your best to withstand it; and that which you cannot of yourself belp, you shall discover to the Lord Chancellor, or Keeper of the Great Seal for the Time being: And to the best of your Power you shall ket

keep and observe the Ordinances made concerning such Persons as do or shall write to the Great Seal.

e

ı.

e.

nt

16

Pe

tiur,

ey

rn-

efs

ed.

ws.

bis

you any

the

e or

£ 10

an-

ime

Call

keep

So help you God and the Contents of this Book.

The Oath to be taken as one of the Clerks ferving under the Curfitors, is as follows.

TO U shall swear, that you, during the Time of your Service as one of the Clerks of the Cursitors Office under A. B. Esq; shall well and truly under him serve our Sovereign Lord the King, and his Leige People, and that if you hall know any Fraud or Falskood procured or intended to the abusing of the Great Seal, or the Dama e, or Prejudice of the King, you shall do your best to withstand it, and that which you annot of yourself help, you shall discover to the cursitor your Master; and if you shall find that hereby groweth no sufficient Redress, then you hall discover the same to the Lord Chancellor or seeper of the Great Seal for the Time being; ad besides, to the best of your Power, observe be Orders made concerning such Persons as do shall write to the Great Seal.

So help you God.

The Curfitors Office is in Chancery Lane.

to got that well and

f the Clerks of the Petty-Bag Office.

THE Principal Clerks of the Petty-Bag are three in Number, (of which the Master of the Rolls is Chief) and have several Clerks unter them. They transact great Variety of Buiness, which requires Knowledge and Experience in the Practice of the Law; and have the naking out Writs of Summons to Parliament;

D 3 and

and Commissions directed to Commissioners of every Shire for assessing of Subsidies, and Taxes, as appears by the Stat. 33 H. 8. c. 22. Conge de Estiers for Bishops, on their Promotion to any See; Patents of Customers, Gaugers, Controllers, and Alnegers, Liberates upon Extents of Stat. Staples, and Recovery of Recognizances

forfeited, and all Elegits upon them.

All Offices that are found post Mortem are brought to the Petty Bag Office, to be filed. Here are entered all Pleadings of the Chancery concerning the Validity of any Patent, or other Thing which paffeth the Great Seal; which Pleadings are according to the Course of the Common Law. And if any Question arise about the Acknowledgment of any Deed acknowledged in the Chancery before the Lord Chancellor, Lord Keeper, Master of the Rolls, or any Master of the Chancery it is to be here prosecuted; and ail Statutes and Recognizances taken before any Officers of this Court, to that purpole deputed, are transmitted hither. Also all Suits for or against any privileged Person in this Court, are brought and proceeded only in this Office. And by the Clerks here, divers Things are transmitted from the Riding Clerk, and the Inrollment Office in the Chapel of the Rolls, &c.

## The Oath of a Clerk of the Petty-Bag.

YOU shall swear, that well and truly you shall ferve the King and his People, as one of the Ministers and Clerks in the Office of the Petty-Bag, whereto you are now admitted; and well and truly order yourself in the same according to your Skill and Learning. And you shall be diligent to surther the King's Business from Time to Time as need shall be or require; and you shall not assent to any Fraud or Deceit to be had or done by you, or by any by your Consent, in any of the King's Records whereunto you shall have

bave Recourse, but well and truly you shall enreat the same.

So help you God.

The Petty-Bag Office is in the Rolls-Yard in bancery-Lane.

## Serjeant at Arms.

1

ľ

.

-

n

e

t,

[-

11

76

1-

e

u

172

ill

THIS Officer attends the Lord Chanceller, and carries the Mace before his Lordship; and by him, or his Substitutes, Persons standing Contempt of the Court are seised and brought p as Prisoners.

## Warden of the Fleet.

THIS Officer attends the Court in order to receive such Prisoners, as are committed by a Court.

### Clerk of the Chapel of the Rolls.

IE attends at the Rolls Chapel, to fearch for Deeds, &c. and to make out Copies of the me.

And Note; That besides these Officers, there a Clerk of the Crown in Chancery; Clerk, d Controller of the Hanaper; Clerk for Involging Letters Patent, &c. not employed in Prodings of Equity, but concern'd in making out mmissions, Patents, Pardons, &c. under the eat Seal, and collecting the Fees thereof: A crk of the \* Faculties for Dispensations, Li- \* Vide 25 H. 8. occs, &c. Clerk of the Presentations, for Be-c. 20. fices of the Crown in the Chancellor's Gift; erk of † Appeals, on Appeals from the Courts the Archbishop to the Court of Chancery; † Vide 25 H. 8. nd divers other Officers and Clerks who are

onstituted by the Chancellor's Commission or D 4 Letter

Letter, and they are to attend the Lord Chanlor for particular Purposes, and on particular Occasions; such as the Sealer of Writs, &c. Others are granted by Patent from the King; as the Clerks for writing Licences of Alienation, Writs of Licences of Protection, and many others of the like Nature. And some are ordained by Parliament to be nominated and constituted by the King's Letters Patent; such as the Writer and Involler of Consirmations of all Licences, and Dispensations, as shall be brought into Chancery under the Archbishop of Canterbury's Seal, &c.

eind and much mil

ordanismon consecutation bear A

The state of the foreign of the state of the

The same of the property of the same of th

and the commission of a send by T. H. E.

ad part I am to make the and ending against

yd Baccife, sie omer to ydd, affecte game yant. Yd baccife on bal (**T.H B** is thomasis, am

dec on the for the tree Experience where

# PRACTICE

OF

The Court of Chancery.

### CHAP. I.

Of Parties to the Suit: And of Proceedings in Equity in General.

S the Business of this Court is chiefly taken up in its extraordinary Quality; we intend in the following Treatise intirely to confine ourselves to that Branch; and therefore, in this Court, Suits are generally commenced, prosecuted and defended by Parties in their own Namesonly, except in Cases of Infants, Lunaticks, Ideots, and Feme Coverts; and they are prosecuted by such in the Name of some Person as their Problem Amy, or next Friend, and by their Committees in case of Lunaticks and Ideots; but if Suits are brought against any of these Persons,

fons, they must have Guardians appointed or assigned them by the Court, by whom they must answer and defend such Suits.

Suits may also be brought here either in the Party's own Right, or in Right of another, or in both the Rights: Of the first Sort are most Suits in this Court; of the second Sort are Suits by Executors, Administrators, Trustees, &c. and of the last Sort are Suits of Baron and Feme, for Lands, &c. of the Wise's Right. And whoever sues in his own Right must take Care that he hath no legal Disability; as Outlawry, Excommunication, &c. for such Disability may be pleaded in Bar.

Regularly all that are interested are to be made Parties, otherwise the Desendant may demur; or if he doth not, the Court will not proceed to a Decree; or if a Decree be made, it may be reversed; but if it be not reversed, yet none but such as were Parties and those claiming under them can be bound

by it.

They only are Defendants to a Bill against whom Process is prayed. Fawkes against

Prat, I Will. Rep. 593.

The Grantee of a Rent-Charge must make all the Purchasers Parties. And if two or more have a joint Interest, regularly they must be all Parties; so if two or more, are liable to a Demand, you cannot proceed against one alone. 2 Vern. 195. So all Executors Trustees or their Representatives, are to be made Parties; but this Rule may be dispensed with, if any of them are not amenable, or if they have stood out Process to a Sequestration.

Where

### Proceedings in Equity in General.

Where there is a general Account prayed to bear a Proportion of Loss, and the Parties and not Parties are equally affected, the Bill shall not abate for want of Parties, for it will appear before the Master as if all were there. MSS. Ca. in Cha. Pasch. Anne.

Or where there are two Executors and one of them lives beyond Sea, the Executor abroad need not be made a Party, if the Executor here has Assets in his Hands. Ibid.

Feffery v. Napper, Pafeb, 7 Anne.

In Case of a Charity, it is unnecessary to make all the Tertenants Parties. 1 Salk. 63. 1 Will. Rep. 99.

All Parties to a Vestry Order must be made Desendants. Mich. 15 Car. 2. Hinch-

man and Ayer, Hard. 333.

A Trustee for Three cannot be called to an Account by one of them, without making the others Parties. Mich. 1682. Hanne and

Stevens, 1 Vern. 110.

But one Legatee may sue without the others. Mich. 34 Car. 2. Haycock and Haycock, 2 Chan. Ca. 124. Tho' one Legatee may sue, yet if the Residue of the Personal Estate be devised to Three, Q. Whether one alone may sue for his Part; and Vide Nel. Chan. Rep. 243. where it is held he cannot.

Executors must be made Parties, Trustees,

Co-obligors, &c. Vide Nel. Rep. 334.

All Executors must sue and be sued. 3 Chan. Rep. 92. 1 Chan. Ca. 277. But if the Plaintiff sues one Executor, and alledges in his Bill that he knows not the other, and prays a Discovery, this will be no Cause of Demurrer. Ruled Mich. 1682. Bowyer and Givert, 1 Vern. 95.

In a Bill to be relieved touching a Lease for Years, or other personal Duty against Executors though the Executors be but Executors in Trust; yet it is not necessary to make the Cestui que Trusts, or Residuary Legatees, Parties. 1 Vern. 261.

If an Executor of an Obligor be fued here

(a) A Quære to discover Assets, you must make all the (a) is made, Whe-Obligors Parties, that the Charge may lie ther you may equal. 2 Vent. 348. Vide Nel. Chan. Rep. 105. where it is held not to be necessary to sue all leave out them the Obligors; and that any one who is that are bound compelled to pay the Money, may oblige only as Surethe others to contribute.

is clear that if a Judgment be had at Law against one Obligor, you may sue the Executor of him alone to discover Assets, &c. Because the Bond is drowned in the Judgment. Vide 2 Vent. 348. 2 Chan. Ca. 29.

But none need to be Parties to a Bill, except those that may be bound by the Decree. And great Caution ought to be used in making Desendants to a Bill, for if it be Matter of Evidence, whereby to make a Discovery, you will be obliged to pay them their Costs; and another Thing, you deprive yourself of their Evidence; for it is the constant Rule of this Court, that the Answer of one Desendant cannot be read against another; and especially when it doth not appear, that they have any thing in their Custody, nor pray any Thing against them, for then they may very well demur to the Bill.

If one of the Defendants is profecuted to Sequestration, the Cause may be carried on without him. Mich. 1699. Parker and Blackburn.—Yet, I think, in such Case, if the Sequestration be for want of an Answer, you must

must obtain an Order that the Plaintiff's Clerk in Court may attend with the Record of the Bill at the Hearing; and the Court will then decree the Bill to be taken pro confesso against that Defendant sequestred, and at the same Time make such Decree against the other Defendants who have answered, and are brought to Hearing, as the Court shall think sit.

By the late Act of Parliament,\* where a \* 5 Geo. 2. c. Defendant cannot be found to be ferved with 25. Process, and it is believed he absconds to avoid being served with Process of Subpana, upon an Affidavit thereof, the Court makes an Order appointing him a Day to appear to the Plaintiff's Bill, which Order is to be inserted in the Gazett, as directed by the said Act; and that Order being read in the Parish Church of the last Place of the Defendant's Abode, and stuck up at the Royal Exchange, the Court, upon the Defendant's Refusal to appear to the Plaintiff's Bill, will make an Order for the Bill to be taken pro confesso.

A Bill may be brought against one Factor without his Co-factor, being beyond-Sea.

Before Answer the Plaintiff may, by Motion of Course, obtain an Order to amend his Bill, and add Parties: And also any Time before Publication, the Court will suffer the Plaintiff to add Parties; and without Costs, if there be no Plea or Demurrer; and if the Addition or Amendment be so small as not to require a new Copy of the Bill, nor any further Answer from the Defendants who have already answered, the Plaintiff amending the Defendant's Copies. And even after Publication, and at any Time before Hear-

### Of Parties to the Suit: And of

ing, the Plaintiff may obtain an Order to add Parties to his Bill: But in this Case the Cause, as to such new Defendants, must be

heard upon Bill and Answer.

Where three or four Orders are obtained for the Amendment of a Bill, and new Ingrossments made under those Orders, the Rule of Court is, if the Plaintiss moves for farther Liberty to amend his Bill, he shall pay full Costs to be taxed. Brinfdel and Sir John Thompson, Barnard. 332.

Where a Decree is obtained for Satisfaction of Tradesmens Bills by Part-Owners of a Ship, and some of the Tradesmen are no Parties to the Decree; any of the Tradesmen, not Parties, may, after the Decree drawn up, or even signed and inrolled, move the Court, and obtain an Order, that paying his Proportion of the Charges of the Costs of the Suit in obtaining the Decree, he may be let in to prove his Debt and have the Benefit of such Decree: And in all like Cases 'tis the same.

Before Answer, a Defendant may be struck out upon the Plaintiff's Motion; and if a Defendant answers and disclaims, or appears disinterested, his Name may be struck out on Motion of the Plaintiff, but it must be with Costs to be taxed after Answer. So a Defendant may be struck out at any Time before Hearing; but after Appearance and Answer, it is with Costs; the Bill, as to him, being dismiss'd. A Plaintiff may likewise be struck out of the Bill any Time before Hearing, if those that are left be sufficient to answer the Costs; but a Special Order of the Court must be obtain'd for that Purpose.

Proceedings in Equity in General.

Thus much may suffice for the present with regard to Parties. Come we now to speak briefly concerning Bills, and the Proceedings thereon in general.

And first, with Respect to a Bill in Equi-Original Bill.

ty: It is in Nature of a Declaration at Law, wherein the Plaintiff is to set forth the Circumstances of his Case, as for some Fraud, Force, or Injury done him, praying Relief; for that he is without Remedy by the Common Law, and also Process of Subpana against the Desendant, to compel him to answer the Charge of the Bill: And if it be to quiet the Possession of Lands, or to stay Waste, or Proceedings at Law, he therein also prays an Injunction, &c.

The Bill must have all necessary Parties, both Plaintiffs and Defendants, and must be under Counsel's Hand; and it ought to be true in Substance, and the Matter plainy and fufficiently alledged; but it must not be impertinent, nor criminal, nor scandaous; for if it is, the Defendant may refuse to answer it until such Scandal and Imperinence be expunged: But the Defendant is o move the Court, upon which he obtains n Order to have the Bill referred to a Mater, and he to report whether it be scandaous or impertinent; which if so reported, the Court, upon Motion will make another Order that fuch Impertinence or Scandal be expunged by the faid Master; and that the Plaintiff shall pay the Defendant his Costs occasioned by such Impertinence or Scandal, to be taxed by the faid Master.

Note; The Counsel who signed the Bill,

ought of right to pay these Costs.

### Of Parties to the Suit: And of

N. B. If it be for Scandal, in the Defendant's Answer, the Master usually taxes very large Costs; and if it be very scandalous, the Master may tax the Plaintiff 1001. or more for his Costs; therefore great Care ought to be taken in drawing the Bill or Answer, that it be not scandalous. And so also in a Bill reported impertinent, very great Costs are commonly tax'd.

Where a Person may be allowed to set forth in a Bill, particular Instances of Com-

bination, vide Barnard. 263.

When a particular Combination is alledg'd in a Bill, a particular Answer must be given to it. Ibid.

Bills in Equity are usually brought for such Matters as are without Remedy at Common Law. And in Special Cases this Count will grant Relief against, besides, and beyond the Rules of the Common Law.

After the Bill is drawn or perused and figned by Counsel, then it must be fairly ingross'd on Parchment, with double One-Shilling Stamps, and being filed with the Six Clerk, the Plaintiff takes out a Subpana to compel the Desendant to appear to and answer the same: But if the Bill prays an Injunction to stay Proceedings at Common Law, or to stay Waste, you may take out Process of Subpana before the Bill be filed; but you must take care to have your Bill siled by or before the Return of the Subpana.

Process of Subpana being issued, and the Defendant therewith served, he appears, and puts in his Answer to the Bill (if there be no Cause for a Plea or Demurrer) then the Plaintiff replies: But if the Answer be in-

Sufficient,

Proceedings in Equity in General.

.

es

a-

1.

re

or

br

ry

let

n-

d

gi.

ch

m-

m

nd

nd rly

16-

the

ub-

to

ays

m.

ake

be

Juc

the

the

and

no

the

innt,

ufficient, the Plaintiff files or delivers Exeptions to the Answer as insufficient; which xceptions must be figned by Counsel; and e Defendant has eight Days after Excepons filed, or delivered, to submit whether will put in a further Answer or not; and he does not submit to put in a further nswer, the Plaintiff may move to refer it to Mafter to look into the Bill, Answer, and ceptions, and certify whether the Answer fufficient in the Points excepted to or not; nich if reported insufficient, the Plaintiff es out a Subpana against the Defendant 40 s. Costs, if the Answer was sworn in wn; but if sworn in the Country 50 s. its; and takes out another Subpana returnle immediately against the Defendant, for m to put in a better Answer; which Subna may be served on the Defendant's Clerk Court: But the Defendant, if he is aded by Counsel that his Answer is sufficient common Intent, may take Exceptions to Master's Report, which Exceptions must figned by Counfel on a double Six-penny mp'd Sheet, and delivered to the fenior egister of the Register's Office; and at the ne Time deposite Five Pounds with him, take this Certificate thereof; a Copy of ich must be served on the Plaintiff's Clerk Court. And after fuch Exceptions filed, ther Party may petition the Lord Chanflor to appoint a Day for arguing the Exeptions before his Lordship; and if those xceptions are allowed good, the Court orers the Defendant to take back his 5 l. deofited with the Register; but if those Exeptions are over-ruled, the Court oders the Plaintiff to receive the 5 1. from the Reg. It-

er, and which 51. Deposite is in lieu of all Cofts with regard to fuch Exceptions taken and the Arguing thereof. When a Replication is filed by the Plaintiff to the Defendant's Answer, he may take out a Subpana to rejoin against the Defendant, and ferve him therewith; or he may petition or move the Court for a Subpana to rejoin. returnable immediately, and that Service thereof on his Clerk in Court may be deemed good Service on the Defendant; and if his Witnesses live in the Country, may in the same Petition pray that the Defendant's Clerk in Court may in four Days after Notice join and strike Commissioners Names with the Plaintiff's Clerk in Court, or in Default thereof, that the Plaintiff may have a Commission for Examination of his Witneffes directed to his own Commissioners.

Note; A Mortgagor may apply to the Court, even without putting in any Anfwer, that it may be referred to the Master in Pursuance of the late Act, 7 Geo. 2. cap. 20. whereupon the Court will make the same Order as though the Cause was at

Iffue and ripe for hearing.

Witnesses may be examined upon Interrogatories, either in Court, or by Commisfion in the Country, wherein the Parties
usually join: And when the Plaintiff and
Defendant have examined their Witnesses,
an Eight Day Rule is given to pass Publication, which when expired, Publication
is to be made of the Depositions, and the
Cause to be set down for Hearing on the
Six Clerk's Certificate, after which follows
the Decree.

But if a Rule is given to publish, which is likely to expire before the Witnesses are

Proceedings in Equity in General.

examined, either Party may apply to the Court, or by Petition, to enlarge the Time.

Note; When the Plaintiff finds sufficient Matter confessed in the Defendant's Answer whereupon to ground a Decree, he may proceed to set down the Cause for Hearing upon Bill and Answer: But in that Case the Plaintiff must take the Defendant's Answer to be true in all Points.

The Decree being served upon the Defendant, by a Writ of Execution thereof, under the Seal of the Court; if he refuses to obey it, all the usual Processes of Contempt may issue out against him for his Imprisonment, till he yields Obedience to it; or there may be an Injunction granted for the Possession of Land, where the Decree is for Land, and the Party remains obstinate after his Imprisonment; and if this is disposed, the Court may grant a Sequestration of the Land: But usually a Commission or a Writ of Assistance is directed to the Sheriff to put the Plaintiff in Possession.

If the Defendant doth not appear on being erved with Process of Subpana in order to inswer; upon Affidavit of Service of the Subana an Attachment may be iffued against him; and if a Non est inventus is return'd by the Sheriff, an Attachment, with Proclamations also, directed to the Sheriff, goes out against him; and this being also return'd Non of inventus, and if he stands further in Contempt, then a Commiffion of Rebellion, directed to four or more Persons Commissioners, may be issued for apprehending him, and taking him into Custody, who may either detain him in Custody, or may bring him into E 2 Court,

Court, and the Court will make an Order to deliver him to the Warden of the Fleet, if taken in London; and if taken in the Country, may deliver him to the County Gaol, in the Execution of which Commission, the Persons to whom 'tis directed may, with the Affistance of a Constable, justify breaking open Doors, if they know the Persons to be within the House. And if the Defendant stands further in Contempt, then on a Non est inventus returned by the Commissioners, you may move the Court upon the faid Commission of Rebellion (which must be produced) for a Serjeant at Arms; and if he cannot be taken, on the Serjeant's certifying the same, you may move upon his Certificate for an Order for a Sequestration, directed to certain Commissioners to sequester the Defendant's Personal Estate, and the Rents and Profits of his Real Estate, until Answer and further Order; by Virtue of which Order a Sequefiration is iffued.

Note; When a Defendant is in Contempt for want of an Answer, and an insufficient Answer is put in, which is no Answer at all; the Plaintiff is not to begin his Process de Novo, but to go on from the last Process. MSS. Ca. Temp. King C. Lady Abergavenny

against Lady Abergavenny.

But if a Peer is a Defendant, you must procure the Chancellor's Letter Missive for his Appearance (which is obtain'd by Petition) and at the same Time you deliver him the Letter, you must give him an Office-Copy of the Bill, signed by the Six Clerk, or his Deputy; and in case he don't appear, you may then have a Subpana against him; and (if he is still in Contempt) you may move

for an Order to shew Cause in eight Days after Personal Service of the Order on the Defendant, why a Sequestration should not go forth; and if he still stands out, a Sequestration issues. Vide 2 Vent. 342. I Danv. Abr. 776.

And if a Bill be against a Member of Parliament, you must give him an Office-Copy thereof, signed as aforesaid, and at the same

Time serve the Subpana.

Note; By a late Order such Persons are not obliged to pay for, or take out any other Copy of such Bill upon his appearing

thereto. 28th Nov. 1743.

And where a Defendant wilfully refuses to answer, and stands out all the Processes of Contempt, viz. Attachment, Proclamations, Commission of Rebellion, Serjeant at Arms, and Sequestration; the Matter of the Bill will be taken pro confesso, and decreed accordingly.

If the Defendant stands out all Contempts 'till Order made for Sequestration, the Plaintiff may move to have his Bill taken pro confesso, though the Sequestration be not sealed or executed. Lucas's Reports

431.

t

12

,

C

n

n

?-

it

le

S.

27

15

1

e

y

15

u

e

Where Process of this Court will not affect Lands in Ireland, to sequester them for a Contempt. Sir John Fryar v. Vernon,

Modern Cases in Law and Equity 124.

Note, That in several Parts of those Proceedings, there may be Affidavits, Petitions, Motions, References, Reports, Exceptions, Certificates, Orders, Injunctions, &c. which as they have no certain Place affign'd them, but are oftentimes preparative to the great-

E 3

er Proceedings, I shall in the next Place discourse of the same, and the Practice concerning them respectively.

### CHAP. II.

## Of Interlocutory Matters.

UNDER this General Head, I shall not only consider Assidavits, Petitions, Motions, References, Reports, Certificates and Orders, with the Practice concerning the same; but also Injunctions, Certiorari's, Proceedendo's, Ne exeat Regno's, Homine Replegiando's, and Habeas Corpus's; which being separately handled in this Place, will render the rest of the Work more distinct and easy.

### Affidacits.

A N Affidavit, generally speaking, is a Deposition in Writing, sworn before fome Person who hath Authority to administer such Oath.

And Affidavits are usually for certifying the Service of Process, or other Matters touching the Proceedings in a Cause. And generally where any Motion, or Petition is made that is not of Course, an Affidavit of the Facts alledged is necessary.

The true Place of Residence, and also the Title of every Person who makes an Affidavit, ought to be inserted therein: And it ought to set forth the Matter of Fact only

which

which the Party intends to prove thereby, and not any of the Merits of the Caufe.

Where a Person comes for a Discovery of a Deed or Writing, and prays Relief, there it is necessary for him to make Affidavit that he has not the Deed or Writing, nor knows where the same is, but believes it to be in the Custody or Power of the Desendant. Vide 1 Chan. Ca. 231.

But if he only prays a Discovery, or to have it produced at a Trial, it is not necessary. I Vern. 147. I Chan. Ca. 11. I Vern. 180. S. P. sed vide I Vern. 59, where the Distinction is taken quite contrary; but it seems to

be the Mistake of the Reporter.

When a Bill is exhibited for a general Discovery of Deeds, 'tis not necessary for the Plaintiff to annex the usual Affidavit; that he has them not in his Custody. Preced. Chan. 536.

A Peeress was ordered to produce Deeds confessed in her Answer upon Honour only, and not upon Oath. Preced. Chan. 92.

If the Bill prays Relief generally, such Relief shall be applied to the Want of the Deed only, and therefore no Affidavit netflary. Trin. 1729. between Whitworth and Goulding—S. P. As to the General Relief being applied to a Discovery, resolved the lame Day between King and King.

Note, That the Affidavit here spoken of, must be annexed to, and filed with the Bill.

An Affidavit of several Persons, by the Manner of wording it, may be made either joint and several, or joint or several: And great Care and Exactness should be observed in drawing Affidavits. They ought to be sairly writ in one Hand, without Blots of

E 4

Interlineations of any Words of Substance; otherwise the Master may refuse to accept them; or if he does, the Register of Affidavits, or bis Deputy, may refuse to file them, and no Use thall be made thereof in this Court. Vide Ord. Chan. 15, 18, 92.

But where small Blots or Interlineations happen, the Master and Register usually

mark them in the Margin.

Either the Plaintiff or Defendant may make an Affidavit, which must be fworn before a Master of the Court, or before a Master Extraordinary in the Country; but the latter are not to take any Affidavits in London, or within twenty Miles of it. And every Master Extraordinary, at the bottom of every Affidavit, is to express the Name of the Town and County where he takes it, or it shall not be held authentick, or filed. Ord. Chan. 148. Nor shall any Affidavit be read in Evidence at the Hearing of a Caufe, though it shall be used upon Motions; for an Affidavit is not to be taken or admitted tending to the Proof or Disproof of the Title or Matter in Question, or touching the Merits of the Cause; nor shall any such Matter be craftily or colourably inferted in any Affidavir of the Service of Process, &c.

Affidavits must be filed in due Time after swearing, and before used in Court; but Affidavits of serving Subpana's to hear Judgment, are seldom filed till some short Time before the Hearing; for if the Parties attend at the Hearing, the Affidavit need not be

filed.

And if any Affidavit be made to ground a Motion upon, it ought to be filed so long before the Motion, as that the other Side may

have

have Time to take a Copy, if the Party expects his Order to be absolute; and all Affidavits, before they are read in Court, or made use of to ground any Orders, Writs, Process or Proceedings, shall be filed in the Affidavit Office, and attested by a true Copy thereof, under the Hand of the Register, or Master of the Affidavit Office, or his Deputy; and till then the Registers, and their Clerks or Deputies, shall not make, pass, or enter any Orders for Attachments, Commissions, or Proceedings grounded on the same: But all Affidavits belonging to the Supplicavit Office, and the Petty-Bag Office, and also those touching Lunaticks and Bankrupts, are not filed in the Affidavit Office, but in the feveral Offices where fuch particular Matters are transacted. Vide Ord. Canc. 23 7an. 1629. and 15 Nov. 1660.

Where any Motion or Petition is grounded upon an Affidavit of having material Witnesses to examine in a Cause, whereby to gain longer Time; the Affidavit must contain the Names of fuch Witnesses who the Party is advised are very material Witnesses to be examined for him in the Caufe, and without whose Testimony he is advised he cannot fafely proceed to the Hearing of the Caufe, to the End that the Court may judge of them, and prevent all unnecessary Delays, Sed vide 1 Vern. 334. where 'tis faid not to be sufficient in an Affidavit to say such a one is a material Witness, and beyond Sea, without mentioning the Point to which he can materially depose. It is necessary that every Affidavit of the Service of Process, or of Orders, do truly and fully prove a good Service. And if the Plaintiff's Name, the Court, the

Return

Return of the Writ, or any Thing material be omitted, no Attachment can thereupon be regularly issued for want of an Appearance: For until a due Service be shewn, no Contempt appears to the Court.

'Tis sufficient to file an Affidavit any Time before, or the Day an Attachment is made

out, but not afterwards.

In an Affidavit of Notice, 'tis not enough to say, that Notice was given, or the Copy delivered the Party's Clerk in Court; but his Name must also be mentioned, that it may appear with Certainty; and it must say Notice in Writing, or Words to that Effect: And if he who serves the Notice does not know that the Person on whom it is served is the Party's Clerk in Court, he must say, As he is credibly informed, and verily believes; first taking Care that he receives Information accordingly. But if a Notice be left at the Clerk in Court's Seat, with his Clerk or Agent, such Clerk or Agent need not be named.

Where the Court directs that Affidavits shall be filed on both Sides by a certain Day, and some of the Affidavits on one Side happen not to be filed on that Day, it is the establish'd Rule of the Court not to enlarge the Order farther, that the other Side may be requir'd to give an Answer to those Affidavits. Barnard. Rep. 402.

All Affidavits, except those of Paupers, must be written on double Six-penny Stamps; and so must a Pauper's before he be admitted; but after he is admitted, all Affidavits

115/1 :

on his Side are without Stamps.

And

And to all Affidavits fworn in this Court, the Deponent must sign his Name or Mark on the Lest Hand Side of the Affidavit, and the Jurat on the Right Side.

### Affidavits.

Affidavit that the Plaintiff hath not the Deeds inquired after, to annex to the Bill before it be filed.

Between A. B. Plaintiff, C. D. Defendant.

A. B. the Plaintiff in this Cause maketh Oath, that he this Deponent hath not, nor to the best of his Knowledge, Remembrance or Belief ever had, all or any of the Deeds, Evidences and Writings relating to the Estate in Question in this Cause, and which are mentioned in this Deponent's Bill exhibited in this Honourable Court against the said Desendant; nor doth this Deponent know where the said Deeds, Evidences and Writings, or any of them now are, unless they be in the Custody or Power of the said Desendant.

A. B.

Sworn, &c.

Affidavit

Affidavit to be made by the Complainant on bringing a Bill of Interpleader.

Between A. B. Plaintiff, C. D. and E. F. Defendants.

A. B. the Complainant maketh Oath, that this Bill is not exhibited by the Confent, Knowledge or Combination of either of the Defendants in the Bill mentioned, but merely of his own Free-will for Relief in this Honourable Court.

A. B.

Sworn, &c.

Affidavit that the Plaintiff had Writings, but hath lost them, proper to be annexed to a Bill.

Between A. B. Complainant, C. D. E. F. G. H. and J. K. Defendants.

The faid Complainant maketh Oath, that fome Time fince, to wit, on, &c. last, the Writings now sued for in this Cause, were in his this Deponent's Custody and Possession; but since the said Time he this Deponent hath accidentally lost them: And this Deponent farther saith, that he doth not know where the said Writings are, unless they are in the Hands or Custody of the said Defendants, some or one of them, or else that the said Writings, are now or late were in the Custody of the said Defendant 7. K. as he is credibly informed and verily believes.

A. B.

Sworn, &c. Affidavit

# Affidavit for a Ne exeat Regno.

Between A. B. Complainant; and C. D. Defendant.

cocinges to commit o

A.B. the said Complainant make Oath, that C.D. the Defendant oweth and now is justly indebted unto him this Deponent in the Sum, &c. and being thus indebted, the said C.D. hath lately threatned and given out that he will speedily leave this Kingdom and go beyond Sea, whereby this Deponent will either lose his said Debt, or the same will be very much endangered, and it will be difficult for this Deponent to recover the same.

A. B.

Sworn, &c.

Affidavit of baving committed Waste.

Between A. B. Plaintiff, C. D. Defendant.

A. C. D. the Defendant in this Cause, on, &c. last past, did pull down and destroy Part of the House and Outhouses at, &c. to which he this Deponent hath lawful Title; being seised in Fee of the said Estate and Premisses in Question, as this Deponent is advised and believes, and for which he is now prosecuting the Desendant; and that the said C. D. did also sell and cut down several Timber Trees upon the Lands belonging to the same, and

continues to commit other Waste and Spoil in and upon the faid Estate of this Depos nent; to his great Lofs and Damage.

A. B. Sworn, &a

Affidavit to be made by any one or more Persons seeing Creditors subscribe their respective Names under a Petition to supersede a Commission of Bankruptcy.

D. &c. maketh Oath that this Deponent did on the Day of fee [naming the Creditors subscribing respectively all Creditors of A. B. Bankrupt, of, &c. severally fign and subscribe their Names to a Petition of the faid A. B. directed to the Right Honourable the Lord High Chancellor of Great Britain, whereby it is prayed, that the Commission of Bankruptcy therein mentioned to have been awarded against the said A. B. may be superseded: And this Deponent further faith, that the several Names E. F. G. H. &c. subscribed to the faid Petition, fignifying their Confent to the Prayer thereof, are of their own proper Hand-writing respectively. [Vide postea Petitions.]

his till his ser tedy base sinstantel ent

Sworn, &t.

Selection Post on the la of Cucling on a tina Depu

mile fell and cut down feveral I unber Lieu Affida-

# Affidavit of Poverty.

Between A. B. Plaintiff, C. D. Defendant.

B. the Complainant (or C.D. the Defendant) maketh Oath, That he is not worth the Sum of five Pounds in all the World, his just Debts being first paid, and his wearing Apparel and the Matters in Question in this Cause only excepted. bile stee out the life, we will

to and to real of this part

A.B. Sworn, &c.

to under Selet et essential. Affidavit to annex to a Certificate of a Person's being of Age.

1 B. of, &c. maketh Oath, That C. D. in the Certificate hereunto annexed named, was baptized the - Day of - in the Year of our Lord as appears by the Register's Book kept for the Parish of-in the County of - which this Deponent himfelf examined: And this Deponent further faith, that the Names - and thereunto subscribed, as Minister and Churchwardens of --- aforesaid, are of their own proper Hand-writing, and were by them subscribed in this Deponent's Presence.

A. B.

Sworn, &c.

Affidavit

Affidavit of seeing a Person serve a Subpoena, when the Person who served it is dead or absconds.

> Retween A. B. Plaintiff, E. F. Defendant.

4 B. of \_\_\_\_in the County of \_\_\_\_maketh Oath, That he this Deponent was prefent on the - Day of and did fee C.D. of, &c. personally serve E. F. the Defendant in this Cause with a Subpana iffuing out and under the Seal of this Honourable Court, by delivering unto the faid E. F. the Body of the faid Subpana, fo under Seal as aforesaid; by which faid Subpana the faid E.F. was commanded to appear in this Honourable Court the - Day of -at the Suit of the above named Plaintiff: And this Deponent further faith, that he this Deponent hath diligently and strictly inquired after the faid C. D. in order that he might prove the Service of the faid Subpana, but this Deponent hath not been able to get any other Intelligence of him, but that he is either dead or absconds, so that he cannot be found.

A. B.

tigalist.

Sworn, &c.

Affidavit that a Defendant absconds to avoid being served with a Subpæna.

Between A. B. Plaintiff, C. D. Defendant.

A. B. the Plaintiff in this Cause maketh Oath, that on strict Search and diligent Inquiry at the usual Place of Residence of the Defendant C. D. and elsewhere, he cannot be found to be served with a Subpana issued out of and under Seal of this Honourable Court, Returnable, &c. at this Deponent's Suit: And this Deponent surther saith, That he was informed by Mr E. F. of—and this Deponent justly suspects, that the said Defendant C. D. is gone beyond Sea, or now absconds on purpose to avoid being served with the aforesaid Process; and saith, that the said C. D. hath not entered any Appearance in this Cause.

A. B.

Sworn, &c.

Affidavit of serving a Subpæna for a better Answer.

A B. &c. [as in Affidavit of ferving a Subpoena to Answer] by which said Subpæna
the said Defendent C. D. was commanded to
appear in this Honourable Court to put in a
better Answer to the Plaintiff's Bill, as appeared to this Deponent by the Label of
the said Subpæna.

A. B.

Sworn, &c.

Affidavit of serving a Subpoena for Costs, and Refusal to pay the same.

Between E. F. Complainant, and C. D. Defendant.

Note; all Subpoena's for Costs must be served personally.

A. B. &c. maketh Oath, that this Deponent did on the - Day of - perfonally ferve the faid Defendant C. D. with a Subpana issuing out of and under Seal of this Honourable Court, by delivering to the faid C. D. the Body of the faid Subpana fo under Seal as aforesaid, by which said Subpana the faid C. D. was required to pay unto the faid Plaintiff, or Bearer, the Sum of -- as appeared to this Deponent by the Label of the faid Subpana; and this Deponent did at the same Time demand of the said C. D. the said Sum of --- but the faid C. D. then refused to pay the same, or any Part thereof, to this Deponent, nor hath the faid C. D. fince paid the same, or any Part thereof, either to this Deponent, or to the faid Plaintiff, as this Deponent is informed, and verily believes. A. B. Sworn, &c.

Affidavitthat a Plaintiff cannot be found.

Between C. D. Plaintiff, and E. F. Defendant.

A.B. of, &c. Solicitor for the Defendant in this Caule, maketh Oath, That he this Deponent hath lately used his utmost Endeavours to find out the said Complainant, but after the most diligent Inquiry this Deponent

ponent cannot hear where he is, though this Deponent inquired after him the said Complainant at, &c. where this Deponent was informed he lived and resided: And this Deponent further saith, that he hath applied to Mr.—the said Complainant's Clerk in Court, and to Mr.—the said Complainant's Solicitor in this Cause, to be informed by them where the said Complainant lived or might be found; but they both resuled to give this Deponent any Information therein.

A. B. Sworn, &c.

Affidavit that the Defendant cannot anfwer without Sight of Golds in the Country.

Between A. B. Plaintiff, and C. D. Defendant.

C. D. the Defendant in this Cause maketh Oath, that this Deponent cannot put in full and perfect Answer to the Complainnt's Bill, without the Sight of several Goods and Things mentioned in the Plaintiff's said ill: And this Deponent further saith, that he said Goods and Things are now at the County of—above—Miles diant from the Place of this Deponent's now tesidence.

C. D.

ıt

ne st

t,

ent Sworn, &c.

Note; If the Bill be for a Discovery of Deeds and Writings, then the Affidavit must e, That the Defendant cannot put in a full nd perfest Answer, &c. without the Sight and erusal, &c. (mentioning the Deeds, &c.) nd which Deeds, &c. are at, &c.

F 2

Affida-

Affidavit that a Defendant is sick and unable to answer.

Between E. F. Plaintiff, and C. D. Defendant.

A.B. of, &c. maketh Oath, that this Deponent hath attended C.D. the Defendant in this Cause for a Week past, as his Physician, and saith, that during the aforesaid Time the said C.D. hath been, and now is, so ill and disordered in his Senses, by Means of a violent Fever, which he now labours under, that he is confined to his Bed: And this Deponent verily believes that the said C.D. is by Reason of such Indisposition, at this Time utterly incapable of answering the Plaintiff's Bill.

Affidavit that a Defendant is unable to attend to put in his Answer.

Between A. B. Plaintiff, and C. D. Defendant.

E. F. of, &c. maketh Oath, that the faid Defendant is so much afflicted with Rheumatick Pains, that he is confined to his Bed, and is unable to attend to put in his Answer to the said Complainant's Bill in this Cause.

E. F.

Sworn, 84

Affidavi

Affidorit of a Witness being old and inim upon a Petition to examine him de bene esse before Issue joined.

> Between A. B. Plaintiff, C. D. Defendant.

A.B. the Plaintiff in this Cause maketh Oath, That G. H. of, &c. Gentleman, a very material Witness on his behalf in this Cause, and without whose Evidence this Deponent (as he is advised, and verily believes) cannot safely proceed to a Hearing in his said Cause, and is now in the seventieth Year of his Age, as he the said G. H. informed this Deponent; and this Deponent surther saith, that the said G. H. appears to be very weak and infirm, and in a declining Way, and in all Probability not likely to live long.

A. B.

15

e-

W

y

a.

d:

ne

n,

ng

ith

his

his

in

13

avil

Sworn, &c.

Affidacit of Service of a Subpoena to testify.

Between A. B. Plaintiff, C. D. Defendant.

G. H. of, &c. Gentleman, maketh Oath, that he this Deponent did on the—Day of—personally serve Mr. J. K. with a Subpæna issuing out of and under Seal of this Honourable Court, by delivering unto the said Mr. J. K. the Body of the said Subpæna under Seal as aforesaid: And this F 3

Deponent did at the same Time give to the said Mr. J. K. one Shilling, by which said Subpana the said Mr. J. K. was immediately to appear in this Court to testify for the Plaintiff in this Cause, as appeared to this Deponent by the Label of the said Subpana.

G. H.

Sworn, &c.

An Affidavit of a Defendant, his Clerk in Court, and Solicitor, in order to enlarge Publication, the Commission being returned.

> Between A. B. Plaintiff, C. D. Defendant.

HE Defendant C. D. of - in the County of -and E. F. the Defendant's Solicitor in this Cause, and G. H. the faid Defendant's Clerk in Court in this Caufe, feverally make Oath, and fay; and first the faid Defendant C. D. maketh Oath, that the Depositions taken in this Cause, by Virtue of a Commission issued for that Purpose out of and under Seal of this Honourable Court, have not been feen, read, or heard read by this Deponent, nor hath this Deponent been informed or a quainted with the Purport or Contents of the faid Depositions so taken, nor will this Deponent, until Publication shall be further enlarged, and pass by the Order of this Honourable Court, in case such Order can be obtained: And the faid Defendant further faith, that he hath feveral material Witnesses to examine, as he is informed, and believes

(to wit—). And the faid E. F. and G. H. for themselves severally make Oath, that the said Depositions are returned, and now remain in the Custody of this Deponent G. H. the said Defendant's Clerk in Court, unopened and unpublished, as these Deponents severally believe: And surther say, that they nor either of them have not seen, read or heard read the said Depositions, or been informed of the Contents thereof, nor will they, these Deponents, or either of them, be informed of the Contents thereof, until Publication shall be surther enlarged, and pass by the surther Order of this Honourable Court, in Case such Order can be obtained.

C. D. All sworn the—Day of — E. F. 1740, at the Publick Office, G. H. before

Affidavit of a Clerk in Court, in order to enlarge Publication, the Commission being returned.

Between C. D. Complainant, E. F. Defendant.

A. B. one of the Sworn Clerks of the Six Clerks Office, the faid—'s Clerk in Court, maketh Oath, that the Depositions taken in this Cause, by Virtue of a Commission issued for that Purpose out of and under Seal of this Honourable Court, are returned unto him this Deponent, and the same remain unopened and unpublished; and this Deponent saith, that he hath not seen nor read, nor is he acquainted with the

F 4 Purport

Purport or Contents of the Depositions so taken, nor will this Deponent be informed thereof until Publication shall pass by the further Order of this Honourable Court, in case such Order can be obtained.

Note; The Plaintiff or Defendant, and his Solicitor, must make the like Affidavit with the Clerk in Court, where Publication is actually pass'd and Witnesses examined, before any Order can be obtained to enlarge Publication.

An Affidavit of a Solicitor in order to enlarge Publication, the Commission being returned.

> Between C. D. Complainant, E. F. Defendant.

A. B. of, &c.—maketh Oath, that he hath not seen, heard read or been informed of the Purport or Contents of any of the Depositions taken in this Cause, nor will he this Deponent see, hear read or be informed of the Purport or Contents of the said Depositions, until the further Order of this Honourable Court, in case such Order can be obtained for the said Desendant to examine any Witnesses.

Note; This Affidavit is used where the Clerk in Court has made an Affidavit as before, but then the Plaintiff or Desendant, at whose Request Publication is enlarged, must make the like Affidavit; and if all three are in or near London, they usually join in

one Affidavit.

Note; An Affidavit of Service of a Subpana to hear Judgment, may be in the same Form as where a Subpana to appear; for which see Fol.

Affidavit of serving a Notice of Motion.

Between A. B. Complainant, C. D. Defendant.

G. H. of, &c. maketh Oath, that he this Deponent did on the — Day of — ferve Mr. E. who acts as Clerk in Court for the Defendant in this Cause (as this Deponent is informed and believes) with a Notice in Writing in this Cause, purporting that the Plaintiff intended to move the Court, &c. (Here recite the Notice) by delivering a Copy of the said Notice to the said Mr. E.'s Clerk or Agent at his Seat in the Six Clerks Office.

G. H.

Sworn, &c.

Affidavit of a Mortgagee's attending to receive his Money pursuant to the Master's Report.

Between A. B. Plaintiff, C. D. Defendant.

A.B. the Plaintiff in this Cause maketh Oath, and saith, that he this Deponent, in Pursuance of the Report of S. T. Esq; one of the Masters of this Honourable Court, bearing Date—Day of did

did on the-Day of-personally attend and wait at the Chapel of the Rolls in Chancery Lane from before the Hour of ten of the Clock until and after the Hour of twelve of the Clock (the Time and Place mentioned in the Report ) in the Forenoon of the faid -- Day of -- in order to receive from the Defendant in this Cause the Sum of 544 l. 7s. by the faid Report, reported due and directed to be paid to this Deponent for Principal, Interest and Costs for the Mortgage in Question in this Cause, when and where the faid Defendant (if more than one, " the faid Defendants, any or either of them") or any other Perfon or Persons on their (any or either of their ) Account or Accounts, did not to this Deponent's Knowledge or Belief attend or pay to this Deponent the faid Sum of 544 l. 7 s. or any Part thereof; but this Deponent faith, that the faid Sum still remains due and unfatisfied.

A.B.

Sworn, &c.

#### Affidavit of serving a Petition.

Between F. F. Plaintiff, C. D. Defendant.

A.B. of, &c.— maketh Oath, that he this Deponent did on the — Day of — Instant [If upon the Party himself, then you say, "Personally serve the (Party) "with a true Copy, &c."] leave at the Seat of Mr.— of the Six Clerks Office, with his Agent there, a true Copy of a Petition

tition in this Cause in Writing, preferred to the Right Honourable the Master of the Rolls, on the humble Petition of the faid Defendant, with his Honour's Answer or Order thereon, bearing Date the -Inftant, whereby it was ordered that the Parties concerned should attend his Honour on the Matter of the faid Petition the then next Day of Petitions, of which Notice was forthwith to be given; which faid Mr.acts as Clerk in Court for the Plaintiff in this Cause, as this Deponent is credibly informed, and verily believes; And this Deponent further faith, that at the Time he fo served the faid Copy he shewed the faid original Petition to the faid Agent.

A. B.

Sworn, &c.

Affidavit of serving an Order on a Clerk in Court.

Between A. B. Complainant, C. D. Defendant.

G. H. of, &c. maketh Oath, that he this Deponent did on the—Day of—personally serve Mr.—with a true Copy of an Order made in this Cause, bearing Date, &c. whereby it was ordered, that, &c. (here set forth the ordering Part) or to that Effect; and this Deponent did at the same Time shew unto the said Mr—the original Order duly passed and entered; which said Mr.—is Clerk in Court for—in this Cause, as this Deponent is informed and believes.

G. H.

Sworn, &c.

Affidavit

Affidavit of serving an Orderto confirm the Master's Report, unless Cause.

> Between A. B. Plaintiff, C. D. Defendant.

H. of, &c. maketh Oath, that he this G. Deponent did on the Day of personally serve the Defendant C. D. with an Order made in this Cause, bearing Date the-Day of-whereby it was ordered that the Report made in this Cause by Mr. B. one of the Masters of this Court, dated the-Day of-and all the Matters and Things therein contained, should stand ratified and confirmed by the Order, Authority, and Decree of this Honourable Court to be obferved and performed by all Parties thereto, according to the Tenor and true Meaning thereof, unless the Defendant having Notice thereof, should within eight Days after fuch Notice shew, unto this Court, good Cause to the contrary, and at the same Time shewing the said C. D. the said Original Order duly passed and entered.

G. H.

Sworn, &c.

· Affidavit

### Affidavit of serving an Order on two Clerks in Court.

Between C. D. Complainant, E. F. Defendant.

1 B. of, &c .- maketh Oath, That he 1. this Deponent did on the -- Day of -last, leave at the Seat of Mr. of the Six Clerks Office, with his Agent there, a true Copy of an Order in Writing in this Cause, duly passed and entered, bearing Date the Day of the faid whereby it was ordered, That, &c. And this Deponent further faith, that he did on the same Day also leave at Mr. -- 's Seat, with his Clerk or Agent there, another Copy of the faid Order in Writing, purporting as aforefaid; which faid Mr. -- is Clerk in Court for the, &c. and the faid Mr. -- for the , as this Deponent is credibly informed and verily believes; And this Deponent at the same Time shewed each of the said respective Agents, he so served as aforesaid, the faid Original Order.

#### Affidavit of serving an Injunction.

Between A. B. Complainant, C. D. Defendant.

G. H. of, &c. maketh Oath, That he this Deponent did on the—Day of—personally serve the Defendant in this Cause with a true Copy of an Injunction in this Cause

Cause issued out and under the Seal of this Honourable Court, bearing Tefte the Day of-Instant [or now last past] and this Deponent did at the same Time shew unto the faid Defendant the Original Writ of Injunction under Seal of this Honourable Court, whereby the faid Defendant was injoined, &c. [bere set forth the injoining Part of the Injunction, concluding with these Words, or to that Effect. ]

G. H. Sworn, &c.

Affidavit, where the Defendants live in different Counties, to obtain an Order, that Service of an Order to confirm a Master's Report nisi, on the Clerk in Court, may be good Service.

Between A. B. Plaintiff, C. D. E. F. and G. H. Defendants.

Mr. of, &c. maketh Oath, that the faid J. feveral Defendants live, or reside, at a great Distance from each other in several Counties of England, to wit, the faid C. D. at L. in the County of D. the faid E.F. at T. in the County of T. and the faid G. H. at S. in the County of R. as this Deponent is informed and verily believes.

Affidavit

## Affidavit of producing all Deeds and Writings before a Master.

Between A. B. Plaintiff, C. D. Defendant.

C. D. the Defendant in this Cause maketh Oath that he this Deponent, or any other Person or Persons for his Use, to his Knowledge or Belief, or with his Privity or Consent, have not nor hath, nor ever had in his or their Custody or Power, any Deeds, Books of Account, Papers or Writings whatsoever relating to the Matters in Question in this Cause, other than and except the several Deeds, Books of Account, Papers and Writings mentioned and contained in the Schedule hereunto annexed.

Affidavit of serving a Writ of Execution of a Decree, upon a Clerk in Court.

Between C. D. Complainant, E. F. Defendant.

A.B. of, &c. — maketh Oath, That he this Deponent did on the—Day of this Instant—deliver unto Mr.—the Defendant's Clerk in Court, a true Copy of a Writ of Execution of a Decree, bearing Teste at Westminster the—Day of—and at the same Time shewed him the said Writ of Execution under Seal of this Honourable Court, whereby the Desendant was injoined or directed to, &c.

A. B.

Sworn, &c.

Affidavit of serving a Writ of Execution of a Decree, &c. upon the Parties.

Between A. B. Complainant, C. D. Defendant.

F. of, &c. maketh Oath, That upon, &c. last, he this Deponent did personally ferve the Defendant with a Writ of Execution of a Decree made in this Cause, bearing Tefte the - Day of -last past, by shewing the faid Writ under Seal of the faid Court unto the faid Defendant, at his House in, &c. and at the same Time delivering unto him a true Copy thereof; by which Decree and Writ the Defendant was injoined to pay, &c. in the faid Decree and Writ mentioned; And at the same Time this Deponent shewed unto the faid Defendant a Letter of Attorney executed by the Complainant under his Hand and Seal, impowering this Deponent to ask and receive of the faid Defendant the faid Sum of, &c. A Copy of which faid Letter of Attorney this Deponent then also left with the faid Defendant, of whom he did then demand the faid Sum of, &c. but the Defendant did not then pay the same, or any Part thereof, to this Deponent; nor hath he yet payed the fame to this Deponent, or to the Plaintiff, or to any other for his Use, to this Deponent's Knowledge or Belief.

E. F.

Sworn, &c.

#### Affidavit of having discovered new Matter for a Bill of Review.

Between A. B. Plaintiff, C. D. Defendant.

C. D. the Defendant maketh Oath, That fince the Time of pronouncing the Decree in this Cause, he, this Deponent, hath discovered new Matter of Consequence in the said Cause, particularly that the Plaintiff on, &c. did, &c. which this Deponent could not possibly know so as to make Use thereof in his Desence, at the Time of pronouncing the said Decree.

Defently down or model and mental bearing

naci il telli il do tilo v akiganish se mir Vang isal ilar i te ni osko od nacijanjihot ko

od for denie and dear to be estimated to the second of the control of the control

THE DESCRIPTION AND CONTRACTOR OF THE PARTY OF THE PARTY

Ogne therby coders be a les

( makets Condition)

C. D.

Sworn, &c.

G man of

En The Control of the Control of

silven of a contract of the total

#### Of Petitions.

A Petition is the Request of a Person in Writing, directed to the Chancellor or Master of the Rolls, shewing some Matter or Cause, whereupon the Petitioner prays some Direction or Order.

In some Cases Petitions may be preferr'd before, as well as after a Bill filed; as for a Person to be admitted in Forma Pauperis.

Brevity and Form are the two Things, chiefly to be observed in drawing them. And all Petitions, even those to be admitted in Forma Pauperis are to be ingrossed on Double Six-Penny Stamps: But after Admission without Stamps.

Most Things, which may be moved for of

Courfe, may be also petition'd for.

And Petitions are upon fo many various and different Occasions, that to enumerate 'em in particular would be endless: It may be sufficient to observe in general, that they are either for Matters of Course, as for a Commission to plead, answer or demur, &c. or for a Guardian to be affigned for an Infant Defendant (if in the Country) and to take the Infant's Answer by such Guardian: Or if the Defendant be a Lunatick, or an Ideot, that he may answer by his Committee (naming him) appointed by the Court. But if the Infants live in London, or within ten Miles thereof, (unless upon some extraordinary Occasion) they appear in Court with some fit Person to be their Guardian; first writing a Note of the Plaintiff's and Defen-

fendant's Names, and underneath that the faid Infant prays that fuch a one (naming him) may be appointed his Guardian to anfwer the Plaintiff's Bill and defend this Suita which the Court usually grants if they fee no Cause of Impediment against the Person to be affigned Guardian; and an Order is drawn up thereupon by the Register and entered: And then the Answer is sworn by fuch Guardian. And Petitions are also preferred for feveral other Matters; as to enlarge Time for answering, or for Subpana's to rejoin returnable immediately, and for Commissions to examine Witnesses in the Country, or for enlarging Publication, or paying Money, &c. or for removing any Hardships; as to stay Process of Contempt, on just Cause, &c. or for amending of Mi/- . takes, &c.

Sometimes they are upon Collateral Matters, as they have relation to fome former Suit or Cause depending, or to an Officer of the Court, as to have a Clerk or Solicitor's Bill tax'd, or to oblige him to deliver up Papers, &c.

And where a Matter comes before the Court by Petition, and the Court makes any Order thereupon without any Attendance, and the Adverse Party would discharge such Order, or have any thing done touching the Matter of such Petition, he commonly applies by way of Petition also; but oftentimes on Motion the Court will do it.

Tho' no former Order made in Court, shall be alter'd or even explain'd upon Perition; yet the Execution thereof may be staid upon Petition, for a short Time, till the Matter can be moved and debated in Court. Ord.

G 2

Chan, 151. Nor shall any Commission for examining Witnesses be discharged, or Depositions or Examinations suppress'd upon Petition, unless the Matter be first referred to a Master, and a Certificate had thereupon: Nor may an Injunction to stay Suits at Law be granted, revived, dissolved, or staid upon Petition, or an Injunction of any other Nature pass by an Order upon Petition, without Notice, and a Copy of the Petition first given to the other Side; the Petition to be filed with or drawn up by the Register, and the Order thereupon entred. Ord. Chan. 151. And no Sequestration, Dismission, Retainer upon Dismission, or final Order is granted upon Petition. Nor shall the Commitment of any Person taken upon Process of Contempt be discharged, but upon hearing the opposite Party. Ord. Chan. 151.

After the Petition is drawn and ingrossed, it must be delivered to the Chancellor's or Master of the Rolls's Secretary, who is to get it answered; and if it be a Matter of Course it is forthwith granted; but if it requires Examination, or the other Side to be heard, then it is usually order'd, that all Parties attend the next Day of Petitions; at which Time the Matter is debated, and such Order made as the Court thinks sit. And in such Cases Affidavits are frequently necessary to shew the Court how Matters stand

on both Sides.

And Matters of great Consequence which require Dispatch, may be petitioned for in the Vacation. And as for Petitions of Course, they are frequently preferr'd in the Vacation, to the Master of the Rolls.

The.

The Lord Chancellor is generally petitioned touching the fetting down of Pleas, Demurrers or Exceptions to be argued, and concerning special Orders made by himself, and for Rehearings: But in most other Cases, Application is made to the Master of the Rolls, who may also be petition'd to rehear a Cause heard before himself.

No Subpana, Attachment or other Process of this Court, (where made out by Order of Court) shall issue out upon any Petition, until an Order be drawn up and enter'd thereupon: and all Process otherwise issued shall

be void. Vide Ord. Chan. 49.

And no Order made upon any Petition (unless the same be by way of Summons) shall be effectual to ground Subpana's, or other Process, but where within three Days in Term-Time, or a Week in the Vacation, after the Order granted, the same be drawn up and entered with the Register; to the End no Person may be surprized by any private Order. Vide Ord. Chan. 217. But this Rule by Modern Practice seems now otherwise; and such Order may be drawn up almost at any Time, provided it be before such Subpacena or Process issues.

Orders upon Petitions must be drawn up, passed, entered, and served by delivering a Copy to the other Party, as other Orders

are, Ord. Chan. 49, 217.

· Villa

# touching the fetting down of Ferse Demonstrates or Lylpping the fetting of Perisions. Tets or Lylpping the many local particles on the contract of the contra

Petition for a Subpoena returnable im-

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable the Master of the Rolls.

The bumble Petition of the Plaintiff,

And no Order made moon

Sheweth,

enoing T

THAT your Petitioner having filed his Bill in this Honourable Court against the said Defendant, and the said Defendant living and residing within — Miles of the City of London, as by the Assidavit annexed appears;

Your Petitioner therefore most humbly prays your Honour, that he may be at Liberty to take out Process of Subpæna for the said Defendant to appear to and answer your Petitioner's said Bill, returnable immediately.

Petition for Process of Contempt returnable immediately.

Between A. B. Plaintiff,

To the Right Honourable the Mafter of the Rolls.

The humble Petition of the Plaintiff,

The brackle Perission of the F

Sheweth,

23.16.15

That your Petitioner, in Easter Term last past, exhibited his Bill in this Honourable Court against the Desendant, to which the said Desendant appeared, but hath neglected to put in his Answer thereto; and the said Desendant living and residing within the Distance of — Miles from the City of London, as by the Assidavit annexed appears;

Your Petitioner therefore most humbly prays your Honour, that he may be at Liberty to make out Process of Contempt against the said Defendant, for Want of his Answer, returnable immediately.

Petition to Lord Chancellor for his Lordship's Letter to a Nobleman.

Between A. B. Plaintiff, C. Duke of E. Defendant.

To the Right Honourable the Lord High Chancellor of Great Britain.

The bumble Petition of the Plaintiff,

Sheweth,

THAT your Petitioner hath exhibited his Bill into this Honourable Court against the said C. Duke of E. who in regard to his Quality cannot be compelled, by the ordinary Process of this Court, to appear to your Petitioner's said Bill;

Your Petitioner therefore most humbly prays your Lordship's Letter missive directed to the said C. Duke of E. desiring his Grace to appear to your Petitioner's said Bill on the—Day of—next.

Petition to amend a Bill by adding a Defendant.

Between A. B. Plaintiff,

To the Right Honourable the Master of the Rolls.

The bumble Petition of the Plaintiff,

Sheweth,

Settlet.

This Honourable Court against the Defendant in—Term last, to which the Defendant hath appeared and put in his Answer; upon which your Petitioner is advised to make E. F. a Defendant in this Cause.

Your Petitioner therefore most humbly prays your Honour, that he may have Leave to amend his Bill, by adding the said E. E a Defendant thereto, with apt Words to charge him.

And your Petitioner Shall ever pray, &c.

And sinc Petilioner Rall over trag-

Petition to amend a Bill, on Payment of twenty Shillings Costs.

Between A. B. Plaintiff, and C. D. and others Defendants.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff,

Sheweth,

THAT your Petitioner having filed his Bill in this Honourable Court against the Defendant C. D. and others, the said Defendant C. D. hath only put in his Answer thereto, (none other of the Defendants having yet appeared thereto) upon Perusal of whose Answer, your Petitioner is advised by his Counsel to amend his Bill.

Your Petitioner therefore most humbly prays your Honour, that he may be at Liberty to amend his Bill, upon Payment of twenty Shillidgs Costs to the said Defendant C. D. or his Clerk in Court, in respect thereof.

And your Petitioner Shall ever pray, &c.

Peritton

Petition for a Plaintiff to dismiss bis

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff,

The bamble Petition of the Plaintiff,

Petril on

THAT your Petitioner having exhibited his Bill into this Honourable Court against the Desendant, since which the said Desendant hath put in his Answer thereto, upon Perusal whereof your Petitioner is advised to dismiss his Bill.

Your Petitioner therefore most humbly prays your Honour that his said Bill may stand dismissed out of this Court with Costs to be taxed by one of the Masters of this Court.

And your Petitioner Shall ever pray, &c.

hal Ord o la chat Behall.

. to tax C. Its according to the gene-

And your Prominer fluit over pray, 810.

Petition to refer an Examination to a Master, and to tax Costs upon the Breach of an Order.

> Between A. B. Plaintiff, C. D. Defendant.

To the Right Honour able the Master of the Rolls.

The bumble Petition of the Plaintiff,

Showeth; A Trout Petitioner in the Standard

THAT the Defendant having been examined on Interrogatories touching a Contempt laid to his Charge, for Breach of an Order of this Court of the—Day of—last, your Petitioner hath examined Witnesses for Proof thereof.

Honour, that it may be referred to a
Master of this Court to consider of
the said Examination and Depositions, and to certify whether the
Desendant hath committed the
Contempt laid to his Charge, and
to tax Costs according to the general Order in that Behalf.

Petition to be discharged out of Custody of the Serjeant at Arms.

Between A. B. and C. D. Plaintiffs, E. F. and G. H. Defendants,

To the Right Honourable the Master of the Rolls.

The Humble Petition of the Defendants,

Sheweth,

THAT your Petitioners are and have been in Custody of the Serjeant at Arms above a Fortnight, for not answering to the Plaintiff's Bill, which your Petitioners have since answered, and paid the Costs of the Contempt, and the Clerk of the other Side doth consent to your Petitioners Discharge, as by the Certificate annexed appears.

Your Petitioners therefore humbly pray your Honour, that your Petitioners may be discharged out of the Custody of the Serjeant at Arms, paying their Fees.

#### Petition for a Return of a Writ of Inquiry.

Between A. B. Plaintiff,

To the Right Honourable the Master of the Rolls.

The bumble Petition of the Defendant,

Sheweth,

THAT your Petitioner was this Day ferved with the Injunction of this Court, to stay his Proceedings at Law for the Matters here in Question, with the usual Clause of Liberty, in Default of a Plea, to enter up Judgment, with Stay of Execution.

That there being Default of a Plea, your Petitioner had an interlocutory Judgment, and a Writ of Inquiry issued, and was long since delivered to the Sheriff, who executed

the same this Day.

Petrilian

That without a Return of the Writ, your Petitioner cannot have a final Judgment.

Your Petitioner humbly prays your Honour, that he may be at Liberty to call for the Return of the faid Writ, and to enter up a final Judgment, he being willing to ftay Execution according to the faid Injunction.

And your Petitioner Shall ever pray, &c.

Petition

Petition for Plaintiff to give Security to answer Costs, and for a Month's Time to answer after such Security given.

> Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The Humble Petition of the Defendant,
Sheweth,

THAT the Plaintiff having filed his Bill in this Honourable Court against your Petitioner, and caused a Subpana to appear and answer to the said Bill to be served on your Petitioner, to which your Petitioner hath accordingly appeared, and taken a Copy of the said Bill; and his Time for answering not being yet expired, nor being in Contempt,

That the Plaintiff by his Bill stiles himself of New York in the West Indies in Parts beyond the Seas, and your Petitioner lives in

the City of London.

Your Petitioner therefore most humbly prays your Honour, that the Plaintiff may procure some sufficient Person here in England to give Security according to the Course of the Court, to answer Costs before your Petitioner be obliged to answer the said Bill, and that your Petitioner may have a Month's Time to plead, answer, or demur to the said Bill after such Security given.

And your Petitioner, &c.

A Petition of Plaintiffs to be admitted in Forma Pauper'.

Between S. M. and S. M. Complainants, H. B. and E. his Wife, S. N. L. L. and H. his Wife, and S. M. and M. his Wife, Defendants.

To the Right Honourable, &c.

The bamble Petition of the Plaintiffs,

Sheweth,

HAT your Petitioners have filed their Bill in this Honourable Court against the said Defendants; thereby setting forth, that H. O. late of—in the County of—Widow deceased, at the Time of her Death, which happened in April 1731, was possessed of a personal Estate, Value 1500 l. and died intestate without Issue, leaving your Petitioners and the Desendants E. B. S. N. H. L. and M. M. her nearest Relations and next of Kin, to whom her personal Estate ought to have come and been equally divided amongst them, according to the Statute of Distribution of Intestates Estates.

That the Intestate dying at—aforesaid, and your Petitioners living very remote from her, and Defendant E. Wife of Defendant B. living with or near the Intestate at her Decease, obtained Administration to her, and she and her said Husband possessed themselves of all the Intestate's personal Estate and Essects, and your Petitioners being intire Strangers to

the

the Intestate's Circumstances, the said Defendant B. and his Wife sent to the Plaintiff N. 56 l. and to the Plaintiff S. 50 l. separately, assuring them that the said respective Sums were your Petitioners respective sulfished intestate's personal Estate, and at the same Time sent general Releases therewith, which your Petitioners upon such Report and Assurances were prevailed upon to execute, relying on such Assurances to be true.

That your Petitioners have fince discovered that the said Intestate died possessed of a personal Estate, Value 1500 l. as aforesaid, and that they were imposed upon in the said Releases, the same being obtained by Fraud and salse Suggestions; and therefore siled their Bill in this Honourable Court against the said Desendants to set aside the said Releases surther than they extend as Discharges for 50 l. and 56 l. and to have an Account of all the Intestate's personal Estate, and that your Petitioners may be paid their sull and distributive Shares of all the said Intestate's personal Estate.

That the said Defendants H. B. and E. his Wife, have put in their separate Answers to your Petitioners said Bill; and the said H. B. (amongst other Things) admits the said Intestate died without Issue, possessed of a personal Estate of about 1000 l. Value, which he and his said Wife possessed themselves of, and that the Petitioners were intitled as aforesaid, and that they received no more than the aforesaid respective Sums of 56 l. and 50 l. and were induced to give Releases or Discharges, as aforesaid, which he says he

H believes

believes they would not have given, if truly informed of the said personal Estate: And the said E.B. (amongst other Things) admits the said Intestate died possessed of a considerable personal Estate; but insists that your Petitioners executed general Releases to her and her Husband, at the Times they received the said respective Sums of 561. and 501. and insists on their being sufficient Discharges; but has not thought sit to plead the said Releases.

That your Petitioners, by Reason of their Poverty, as appears by Affidavit annexed, are utterly unable to prosecute their said Suit, unless they be admitted so to do in Forma Pauper.

Your Petitioners therefore most humbly pray your Honour, that they may be admitted to prosecute their said Suit in Forma Pauper'; and that Mr. may be assigned their Counsel, and Mr.—their Six Clerk.

And your Petitioners shall ever pray, &c.

I bumbly conceive that the Plaintiffs have just Cause to be relieved touching the Matters of this Petition, and for which they have exbibited their Bill.

A. B.

Petition of a Defendant to be admitted in Forma Pauperis.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Defendant,

Sheweth,

THAT your Petitioner is served with Process to appear to and answer the Plaintiff's Bill, but being very poor, as by Affidavit appears, is by Reason of such his extreme Poverty unable to make his Defence thereto, if not permitted to defend in Formal Pauperis.

Your Petitioner therefore most humbly prays your Honour to admit him to defend this Suit in Forma Pauperis, and to assign him for his Counsel Mr.—, and Mr.—for his Six Clerk.

Petition after an Attachment for a Dedimus Potestatem, and for Time to return the Answer thereon.

> Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The Humble Petition of the Defendant, Sheweth,

THAT the Plaintiff having exhibited his Bill into this Honourable Court against your Petitioner and others, and served your Petitioner with Process returnable the first Day of last Term, your Petitioner appeared thereto, but the Writings that related to the Matters in Question not being in your Petitioner's Hands, your Petitioner could not possibly procure the same so as to persect his Answer by the Time allowed by the Rules of this Court; whereupon your Petitioner has been lately arrested upon an Attachment of Contempt of this Court.

That your Petitioner living 100 Miles distant from London, and being willing to enter his Appearance with the Register by his Clerk in Court as upon the Attach-

ment;

Your Petitioner therefore most humbly prays your Honour, that he may be at Liberty to take out a Dedimus Potestatem, returnable the first Return of next Term to take his Answer, and that he may have a Week allow-

ed him within the said Term, to return the same, and that in the mean time all further Proceedings for Want of the same may be stayed.

And your Petitioner, &c.

Note; This is usually answered, That Defendant enter his Appearance with the Register in four Days.

Petition to put in an Answer without Oath.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Defendant,

Sheweth,

THAT your Petitioner is made a Party to the Plaintiff's Bill exhibited in this Court, merely for the Sake of Form.

That the Plaintiff is willing that your Petitioner's Answer to the said Bill should be put in without Oath, and has by his Clerk in Court signified his Consent thereto.

Your Petitioner therefore humbly prays your Honour, that he may have Leave to put in his Answer without Oath to the Plaintiff's Bill.

And your Petitioner shall ever pray, &c.

Note; To this Petition and all other Petitions which require the Clerk in Court's Confent,

fent, he signs in these Words, I do consent to the Prayer of this Petition, if your Honour shall please to order the same.

Petition for Time to answer.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The humble Petition of the Defendant,

Sheweth,

THAT the Plaintiff having filed his Bill in this Honourable Court against your Petitioner and others, whereto your Petitioner hath appeared and taken a Copy thereof, and his Time for answering not being yet expired, nor being in Contempt;

> Your Petitioner therefore most humbly prays your Honour to grant unto your Petitioner a Month's Time to plead, answer or demur to the Plaintiff's Bill, not demurring alone.

Petition for a Feme Covert to answer without ber Husband.

Between A. B. Plaintiff, C. D. and E. his Wife Defendants.

To, &c.

The bumble Petition of the Defendant E.D. Wife of the Defendant C.D.

Sheweth,

THAT the Plaintiff hath exhibited his Bill in this Honourable Court against your Petitioner and her said Husband, whereto your Petitioner hath appeared; and in regard your Petitioner's said Husband hath absconded and lived separate from her these two Years;

> Your Petitioner therefore most humbly prays your Honour, that she may be at Liberty to put in her Answer to the Plaintiss's said Bill without her Husband.

> > And your Petitioner, &c.

Petition for Time to answer, and return a Dedimus.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The Humble Petition of the Defendant,

Sheweth,

T HAT the Plaintiff having filed his Bill against your Petitioner, he has appear-

ed thereto and taken a Copy.

That your Petitioner residing in the County of—a Commission is issued to take his Answer, and made Returnable in three Weeks after Trinity, but your Petitioner sinds he shall not be able to return the same within the Time limited by the strict Rules of the Court; and forasmuch as your Petitioner is not in Contempt, nor has yet had any Order for Time;

Your Petitioner humbly prays your Honour, that he may have Time to put in his Answer to the said Bill, until——and that all Process of Contempt for want thereof be in the mean Time stayed.

And your Petitioner, &c.

Petition to examine a Witness de bene esse before Issue joined.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The humble Petition of the Plaintiff,
Sheweth,

THAT your Petitioner having filed his Bill in this Honourable Court against the said Desendant whereto he hath apeared, but the said Desendant living a great. Distance from London in the Country, he hath obtained Time to put in his Answer till the first Day of next Hillary Term.

That one G. H. of, &c. Gentleman a very material Witness for your Petitioner in this Cause, and without the Benefit of whose Evidence, your Petitioner (as he is advised) cannot safely proceed to a Hearing of this Cause; and the said G. H. being 70 Years of Age or upwards, and very weak and infirm so that in all Probability he may not live till your Petitioner can bring his Cause to an Issue, as by the Affidavit annexed appears.

Your Petitioner therefore most humbly prays your Honour, that he may be at Liberty forthwith to examine the said G. H. de bene esse, as a Witness for your Petitioner in this Cause saving all just Exceptions.

Petition for a Special Commission, and for Commissioners Names, or in Default to issue the Commission ex Parte.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.
The humble Petition of the Defendant,
Sheweth,

THAT on the—Day of—last the Plain. If exhibited his Bill in this Honourable Court against your Petitioner, who has appeared thereto, and taken a Copy.

That your Petitioner's Clerk in Court has oftentimes applied to the Plaintiff's Clerk for Commissioners Names for taking your Petitioner's Answer, who refuses to give Names for that Purpose.

That your Petitioner resides in the County of—and is advised to Plead, Answer

and Demur to the faid Bill.

Your Petitioner therefore most humbly prays your Honour, That he may be at Liberty to take out a Commission to plead, answer and demur to the Plaintiff's Bill; and that the Plaintiff's Clerk in Court may in two Days after Notice hereof give Commissioners Names to the Petitioner's Clerk in Court, to take your Petitioner's Plea, Answer and Demurrer, or in Default thereof, that your Petitioner may be at Liberty to take out the said Commission directed to his own Commissioners.

Petition for a Commission to assign a Guardian, and to take the Answer by such Guardian.

Between A. B. and another Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Defendant,

Sheweth,

THAT the Plaintiffs exhibited their Bill in this Honourable Court against your Petitioner, to which he has appeared and taken a Copy.

That your Petitioner residing in the County of—has craved a Commission to take his Answer; and the Plaintiss have given Commissioners Names for that Purpose.

But forasmuch as your Petitioner is an Infant, and cannot answer the Plaintiffs Bill, nor defend this Suit, without having a Guardian assigned for that Purpose;

Your Petitioner therefore humbly prays your Honour, that he may be at Liberty to fue out a Commission to assign him a Guardian, and to take his Answer by such Guardian.

And your Petitioner shall ever pray, &c.

Petition

Petition to take an Answer de Novo, and to amend the Caption, and stay Process.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The Humble Petition of the Defendant,
Sheweth,

THAT in Hilary Term last the Plaintiff filed his Bill in this Honourable Court against your Petitioner, and a Commission issued to take your Petitioner's Answer, by Virtue whereof it was taken, returned and filed; but on looking into the same there appeared to be a Missake in the Caption, whereupon the Plaintiss obtained an Order to suppress the said Answer, it not appearing by the said Caption that your Petitioner was ever sworn to the Truth of the said Answer.

That in regard this is in your Petitioner's own Delay, who is desirous that this Mistake should be rectified, and is ready and willing to pay the Plaintiff his Costs out of Purse touching the said Order;

Your Petitioner therefore most humbly prays your Honour, that he may be at Liberty to sue out another Commission directed to the former Commissioners to take his said Answer de Novo, and that the Caption thereof may be rectified or amended; and that your Petitioner may have three Weeks Time to return the same, and that all further Proceedings for want thereof be in the mean Time stayed.

A Common Petition to receive Excep-

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff,

Sheweth,

THAT your Petitioner having exhibited his Bill in this Honourable Court against the Desendant, who hath put in his Answer thereto, and your Petitioner being advised that the said Answer is insufficient in several material Points, hath caused Exceptions to be taken thereto. But the said Exceptions not coming in by the Time limited by the Rules of this Court, the Defendant's Clerk in Court resules to accept the same.

Your Petitioner therefore most humbly prays your Honour that the said Defendant's Clerk in Court may receive the said Exceptions.

And your Petitioner Shall ever pray, &c.

Exceptions cannot be ordered to be received as in due Time after three Terms from the putting in of the Answer without special Reasons.

Another

Another Petition to receive Exceptions.

Between A. B. Plaintiff, C. D. and others Defendants.

To the Right Honourable, &c.

The humble Petition of the Plaintiff,

Sheweth,

That your Petitioner having exhibited his Bill in this Honourable Court against the said Defendant and others, the said Defendant put in his Plea and Answer; on arguing of which Plea on the—Day of—last, it was ordered that the same should stand for an Answer, with Liberty to your Petitioner to except to such Matters as in the said Order are mentioned.

That your Petitioner has many material Exceptions to offer in Pursuance of the said Order, but the drawing up and entring of the said Order, and preparing the said Exceptions, which are long, having already run out more than the Time of Course for delivering Exceptions, the Defendant's Clerk in Court resules to accept the same.

Your Petitioner therefore most humbly prays your Honour, that the said Defendant's Clerk in Court may now receive your Petitioner's Exceptions.

A Common Petition to refer Exceptions.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff;

Sheweth,

T HAT your Petitioner having filed Exceptions to the Defendant's Answer, and the Time for submitting being expired;

> Your Petitioner therefore most humbly prays your Honour, that it it may be referred to one of the Masters of this Court, to certify whether the said Defendant's Answer be sufficient in the Points excepted to, or not.

Another Petition to refer Exceptions.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The humble Petition of the Plaintiff,
Sheweth,

That your Petitioner having exhibited his Bill in this Honourable Court against the said Defendant, he appeared and put in his Plea and Answer thereto; on arguing of which Plea, on the—Day of—last, the same was ordered to stand for an Answer, with Liberty to your Petitioner to except to such Matters as in the said Order are mentioned.

That your Petitioner obtained your Honour's Order of the—Day of—last, that the Defendant's Clerk in Court should receive Exceptions as in due Time, and accordingly your Petitioner soon after delivered Exceptions to the Desendant's Clerk in Court; but the said Desendant hath not submitted to put in a surther Answer, although his Time for so doing is expired by the Rules of this Court.

Your Petitioner therefore most humbly prays your Honour, that it may be referred to one of the Masters of this Court to look unto your Petitioner's Bill, the Defendant's Plea and Answer, and your Petitioner's Exceptions, and certify wherein the said Plea and Answer is insufficient.

## Petition to renew a Sequestration.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable the Lord High Chancellor of Great Britain.

The bumble Petition of the Plaintiff,

Shewetb,

THAT the Defendant having refused to answer your Petitioner's Bill, all Process of Contempt to a Sequestration hath been sued out against him, and a Commission of Sequestration hath been sued out, executed and returned; but your Petitioner hath since discovered, that not above one third Part of the said Defendant's Estate is sequestred, and that the said Commission was committed to the Hands of a Person therein named, who neglected to sequester the said Estate;

Your Petitioner therefore most humbly prays your Lordship, that he may be at Liberty to take out a new Commission of Sequestration to sequester the said Defendant's Estate, directed to new Commissioners.

Petition to withdraw a Replication and amend a Bill, upon Payment of Twenty Shillings Costs to such Defendants as have answered.

Between A. B. Plaintiff, C. D. and others Defendants.

To the Right Honourable, &c.

The humble Petition of the Plaintiff,

Sheweth,

THAT fometime fince your Petitioner filed his Bill in this Honourable Court against the said Defendants, to which they appeared and answered, and your Petitioner replied, but no Witnesses have been yet exmined in the said Cause.

That your Petitioner is since advised to amend his said Bill, by adding R. B. a Defendant with proper Charges; and forasmuch as this is in your Petitioner's own Delay;

Your Petitioner most humbly prays your Honour, that he may have Leave to withdraw his Replication, and amend his Bill, as he shall be be advised, on amending the Copies of the said Bill of such of the Defendants who have answered the same, your Petitioner not requiring any Answer to such amended Bill from the said Defendants who have already answered.

Petition for Subpoena's to rejoin, and that Service on the Clerk in Court may be good, and to join and strike Commissioners Names.

Between A. B. Plaintiff, C. D. and others Defendants.

To the Right Honourable, &c.
The humble Petition of the Plaintiff,

Sheweth,

THAT your Petitioner filed his Bill in this Court against the said Defendants, who have appeared thereto and put in their Answers, to which your Petitioner hath replied, and is desirous to speed his Cause.

Your Petitioner therefore humbly prays your Honour, that he may be at Liberty to take out Subpana's to rejoin returnable immediately, and that Service thereof on the Defendants Clerks in Court may be deemed good Service on the Defendants, and that your Petitioner may be at Liberty to fue out a Commission for Examination of his Witnesses returnable without Delay, and that the Defendants Clerks in Court do, in four Days after Notice hereof, join and strike Commissioners Names with your Petitioner's Clerk in Court, or in Default thereof that your Petitioner may have a Commission directed to his own Commissioners.

Note; To the Prayer of this Petition may be added, And that your Petitioner may be at Liberty to examine in Term-Time.

Petition to join and strike Commissioners Names, or in Default, to issue a Commission ex Parte.

> Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Defendant,

Sheweth.

THAT on the—Day of—last your Petitioner was served with an Order obtained upon the Plaintiff's Petition of the—Day of—for a Subpana to rejoin, returnable immediately, and that Service thereof on your Petitioner's Clerk in Court should be good Service, and that the Petitioner's Clerk in Court should in four Days after Notice join and strike Commissioners Names with the Plaintiff's Clerk in Court, or that in Default thereof the Plaintiff might sue out a Commission directed to his own Commissioners.

That your Petitioner, upon receiving the fame, was ready to comply with the Terms therein mentioned, and accordingly applied to the Plaintiff's Clerk in Court, to join and ftrike Commissioners Names with him, who informed your Petitioner's Clerk in Court, that he had not Names, and put him off with trifling Excuses.

Thas

That your Petitioner has very good Reafon to believe that fuch Excuses were made merely for Delay; and in regard your Petitioner hath feveral material Witnesses, as he is advised, to examine, and is desirous the Cause should be speeded;

> Your Petitioner most humbly prays your Honour, that the Plaintiff's Clerk in Court may in four Days after Notice join and ftrike Commissioners Names with your Petitioner's Clerk in Court; or that in Default thereof, your Petitioner may fue out a Commission for Examination of Witnesses, directed to his own Commissioners.

Petition to alter a Commissioner's Name in a Commission, and for Liberty to renew the same, and for Time to return it.

> Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff,

Sheweth,

THAT your Petitioner last Easter Vacation took out a Commission to examine Witnesses, wherein the Defendant joined but your Petitioner was not able to execute the same during that Vacation.

That your Petitioner hopes of doing the fame this Vacation; but one of the Commissioners, to wit, T. B. Esq; is engaged to be in London; whereupon your Petitioner hath named the Persons subscribed in his Room, but the Defendant resuses to strike the said Names in hopes of delaying your Petitioner, and that the Vacation may be lost.

Your Petitioner therefore most humbly prays your Honour, that he may be at Liberty to alter the Commission, and that your Honour will be pleased to appoint, which of the two Persons subscribed shall stand in his Room, and that your Petitioner may renew the said Commission, and make the same returnable without Delay.

Petition to examine a Defendant.

Between A. B. Plaintiff, C. D. and E. F. Defendants,

To the Right Honourable, &c.

The bumble Petition of the Plaintiff,

Sheweth,

THAT Issue being joined in this Cause, your Petitioner is advised that the said Defendant E. F. is a very material Witness for your Petitioner; and forasmuch as he is no Way concerned in Point of Interest,

Your Petitioner most humbly prays your Honour that he may be at Liberty to examine the said Desendant E. F. at the Examination of Witnesses in this Cause, as a Witness for your Petitioner, saving just Exceptions.

Petition to add an Interrogatory or two, but not to examine any Witness already examined.

> Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff,

Sheweth,

THAT your Petitioner obtained an Order for a Commission to examine Witnesses returnable—and accordingly examined several Witnesses, and returned his
Commission; but before Publication passed,
the Plaintist obtained an Order for a Commission to examine Witnesses this Vacation;
and your Petitioner has joined and struck
Commissioners Names for that Purpose; but
no Notice is yet given of executing the said
Commission.

That your Petitioner is advised it is neceffary to add an Interrogatory or two to his former Set of Interrogatories.

Your Petitioner therefore humbly prays your Honour, that he may be at Liberty to add an Interrogatory or two to his former Set of Interrogatories, but so as not to examine any Witness that hath already been examined.

## Petition to enlarge Publication.

Between A. R. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff.

Sheweth,

THAT on the Instant a Rule was entered by the Defendant's Clerk in Court for passing Publication in this Cause;

which Rule is not yet expired.

That your Petitioner has not as yet been able to examine any Witnesses, tho' he bath several material Witnesses, as he is advised, to examine in this Cause, without whose Testimony he cannot safely proceed to a Hearing.

Your Petitioner therefore most humbly prays your Honour, that Publication in this Cause may be enlarged till the first Day of the next Term.

Petition to enlarge Publication.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Defendant,

Sheweth,

......

THAT a Commission has been executed in this Cause, and is returnable, since which the Plaintiff hath given a Rule to publish, but the same is not yet expired; and forasmuch as your Petitioner hath several material Witnesses to examine in this Cause who live in and about the City of London;

Your Petitioner stherefore most humbly prays your Honour, that Publication in this Cause may be enlarged for a fortnight.

## Petition to enlarge Publication.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The humble Petition of the Defendant,

Sheweth,

THAT this Cause being at Issue, several Witnesses have been examined on the Part of the Plaintiff, and this Day being the —Day of—a Rule is entered by the Plaintiff's Clerk in Court, for passing Publication in this Cause.

That by Reason of your Petitioner's and his Solicitor's Illness, your Petitioner has not been able to examine his Witnesses this Vacation, although he hath several very material Witnesses, as he is advised, to examine; and in regard your Petitioner hath no Intention to postpone the setting down this Cause for Hearing,

Your Petitioner therefore humbly prays your Honour, that Publication in this Caufe may be enlarged for a Month.

And your Petitioner shall ever pray, &c.

contribution of the state of th

Petition to enlarge Publication, so as not to binder setting down the Cause, and for an Original and Cross Cause to come on together.

> Between A. B. Plaintiff, C. D. Defendant. and the faid C. D. Plaintiff, and the faid A. B. Defendant,

To the Right Honourable, &c.

The bumble Petition of, &c.

Sheweth,

THAT these Causes being at Issue, Commissions were taken out and executed, and Witnesses examined thereupon

on the last long Vacation.

That your Petitioner, the Plaintiff in the Original Cause, the twenty first Instant caused a Rule to be given for passing Publication in the Original Cause, but having several material Witnesses still to examine; and your Petitioners having consented and agreed to the several Matters contained in the Prayer of this Petition, your Petitioners Clerks in Court having subscribed their Names testifying such Consent,

Your Petitioners therefore most humbly pray your Honour, that Publication may be enlarged in the Original Cause until the first General Seal after this Term, and that Publication may then pass in both Causes, but not so as to hinder hinder the Plaintiff in the Original Cause from setting down the same for Hearing this Term, and that the Plaintiff in the Cross Cause may be at Liberty to fet down his Cause to be heard t the fame Time.

And your Petitioner, &c.

Petition to enlarge Publication, and for a Commission to examine, &c.

> Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Defendant,

Sheweth,

HAT the Plaintiff has given Rules to produce Witnesses, and to pass Publication as of the last Term, but has not examined any Wirnesses.

That your Petitioner hath feveral very material Witnesses, as he is advised, to examine in this Cause, without whose Testimony he cannot fafely proceed to a Hearing; and forasmuch as your Petitioner lives in, &c.

> Your Petitioner therefore most humbly prays your Honour, that Publication in this Cause may be enlarged until the first Day of the next Term, and that your Petitioner may have a Commiffion for Examination of Witneffes, and that the Plaintiff's Clerk in Court

May join and strike Commissioners
Names with your Petitioner's Clerk
in Court, in four Days after Notice
to the Plaintiss's Clerk in Court, or
that in Default thereof, your Petitioner may be at Liberty to take out a
Commission this Vacation directed to
his own Commissioners.

And your Petitioner Shall ever pray, &c.

Petition to serve a Subpoena to hear Judgment on a Clerk in Court, Defendant absconding.

Between A. B. Plaintiff, C. D. and others Defendants.

To the Right Honourable, &c.

The humble Petition of the Plaintiff,

Sheweth,

THAT your Petitioner's Cause being set down to be heard the—Day of—next ensuing, and Subpana's to hear Judgment have been issued and served on all the Desendants, except the Desendant C. D. and the said Desendant C. D. absconding and concealing himself, so that your Petitioner is not able to serve himswith a Subpana to hear Judgment in this Cause as by the Affidavit annexed appears.

Your Petitioner therefore most humbly prays your Honour, that Service of the faid Subpana to hear Judgment on the faid Defendant C. D.'s Clerk in Court may be deemed good Service on the faid Defendant.

Petition to prove an Exhibit viva voce at the Hearing.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff,

Sheweth,

That this Cause being set down to be heard before your Honour, your Petitioner is advised it will be necessary for him to prove, at the Hearing thereof, a certain Bond bearing Date the—Day of—entered into by the said Defendant to your Petitioner in the Penalty of 1000 l. conditioned for the Payment of 500 l. and Interest.

Your Petitioner therefore most humbly prays your Honour, that he may be at Liberty at the Hearing of this Cause, to examine one or more Witness or Witnesses viva voce to prove the said Bond.

Petition that an Answer taken in one Cause may be read, and made use of at the Hearing of another Cause.

> Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Defendant;

Shewet b,

ThAT your Petitioner having exhibited his Bill in this Honourable Court against the now Plaintiff for a Discovery of their Right and Title to the several Premisses in Question in this Cause to which the now Plaintiff put in his Answer;

Your Petitioner therefore most humbly prays your Honour, that he may be at Liberty to read and make Use of the now Plaintist's Answer put in to your Petitioner's faid Bill at the Hearing of this Cause.

And your Petitioner, &c.

Petition that Depositions taken in one Cause may be read and made Use of at the Hearing of another Cause.

> Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The Humble Petition of the Defendant,

Sheweth,

073

T HAT one Mr. H. I. a Mortgagee of the Premisses in Question in this Cause, having sometime heretosore exhibited his Bill to foreclose in this Honourable Court against your Petitioner and the now Plaintiff, and Issue being thereupon joined, several Witnesses were examined in the said Cause.

Your Petitioner therefore most humbly prays your Honour, that he may be at Liberty, at the Hearing of this Cause, to read and make Use of the Depositions taken in the said Cause, saving all just Exceptions.

Petition for Leave to examine Witnesses after Publication, upon the usual Affidavit.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff,

Sheweth,

Protests 4

THAT Publication in this Cause is passed, and the Cause is set down for Hearing before your Honour, but your Petitioner having several material Witnesses to examine without whose Evidence he cannot safely proceed to a Hearing, and your Petitioner, his Clerk in Court, and Solicitor, having not seen or inspected the Depositions taken in this Cause, or otherwise published or caused to be published the same, as by the Affidavit annexed appears.

Your Petitioner therefore most humbly prays your Honour, that Publication in this Cause may be enlarged for a Fortnight, and the Cause adjourned for that Time.

And your Petitioner Shall ever pray, &c.

For the Form of an Affidavit to be annexed to this Perition, vide Affidavits.

Petition to set down a Cause for Rebearing on Defendant's baving made Default, and not appearing at the Hearing.

while of Great Driver

Sheweth,

The Day of last, and your Petitioner not attending, your Honour made the usual Decree; and your Petitioner being willing to pay to the Plaintiff the Costs of that Day's Attendance, whenever the Plaintiff's Clerk in Court shall think fit to deliver your Petitioner a Bill of the same;

Your Petitioner therefore most humbly prays your Honour, to appoint some short Day for the Hearing of this Cause as to your Petitioner.

And your Petitioner, &c.

a bass or bolosid of bloom aids. I Borody sample ed yet well:

And your Petitioner fould ever propplet

Petition to set dozon a Plea to be argued.

Between A. B. Plaintiff, C. D. and others Defendants.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble Petition of the Defendant C. D.

Sheweth,

Restaurant.

THAT in—Term last the Plaintiff filed his Bill in this Honourable Court against your Petitioner and others, since which he has thought fit to amend the same.

That in—your Petitioner put in his Plea and Answer to the said amended Bill, which Plea the Plaintiff hath not yet set down to be argued.

Your Petitioner therefore humbly prays your Lordship, that he may be at Liberty to set down his Plea to be argued; and that your Lordship would be pleased to appoint a Day for the arguing thereof.

Petition to set down Exceptions to a Master's Report.

Between A. B. Plaintiff, E. F. Defendant.

To, &c.

To the Right kingens in fice

The bumble Petition of the Plaintiff,

Sheweth, by O walk noisealded T

THAT your Petitioner hath lately filed Exceptions to the Report of Mr. K. one of the Masters of this Court, made in this Cause bearing Date the—Day of last past, and deposited 5 l. as by the Register's Certificate hereunto annexed appears.

Your Petitioner therefore most humbly prays your Lordship to appoint a short Day for the arguing of the said Exceptions.

## Retition to fet down a Cause for Hearing.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff,

Sheweth,

THAT Publication is by Order, bearing
Date the—Day of—to pass in
this Cause the first Day of next Term; and
your Petitioner by the same Order is to
procure the said Cause to be set down to
be heard some Time within the same Term.

Your Petitioner therefore humbly prays your Honour, that this Caufe may be fet down in the Paper of Caufes for the last Day of Caufes within the next Term.

Petition to appoint a Short Day for a farther Hearing on a Master's Report.

Between A. B. Plaintiff, C. D. Defendant. and to M. Liviendants.

To the Right Honourable, &c.

The Humble Petition of the Plaintiff,

Sheweth,

THEO O

HAT on the Hearing of this Cause on the Day of 1744. it was ordered and decreed (as in the Decree) and after the faid Master should have made his Report, fuch farther Order should be made therein as should be just.

That in Pursuance thereof the faid Mafter hath made his Report bearing Date the Day of last past in Relation thereto.

Your Petitioner therefore most humbly prays your Lordship to appoint a short Day for the Hearing of this Cause on the faid Master's Report.

And your Petitioner shall ever pray, &c.

Recent Countries of Asphone, as by the Alli-

widowal firm relegant appealing you'Y in was a condition of the present of Petition that Service of an Order nisi on the Clerks in Court may be good Serzice.

> Between A. B. Plaintiff, C. D. E. F. and G. H. Defendants.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff, Sheweth,

HAT by the Decree made on the Hearing of this Cause the—Day of—1743, it was referred to Mr. T. one of the Masters of this Court, to compute what was due to your Petitioner for Principal, Interest and Costs, for the Sum of 500 l. secured to your Petitioner on the Premisses in Question in this Cause.

That the said Master by his Report dated the—Day of—1744. certified to be due to your Petitioner on his said Security the Sum of 700 l. for his Principal, Interest and Costs, and your Petitioner having on the—Day of 1744. obtained an Order of this Court to confirm the said Report, unless Cause, he has not been able to get the said Order served upon the said several Defendants by Reason the said Defendants live at a great Distance from each other in several Counties of England, as by the Affidavit annexed appears.

Your Petitioner therefore most humbly prays your Honour, that Service of the faid Order on the several Clerks in Court Court who are concerned for the faid feveral Defendants in this Cause may be deemed good Service on the said several Defendants.

And your Petitioner Shall ever pray, &c.

Petition to enter a Decretal Order nunc pro tunc.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of, &c.

Sheweth,

AND MINE CO. T. C. C. C.

That upon the Hearing of this Cause the—Day of—a Decree was pronounced, which has fince been drawn up and passed by the Register, but the Time for entring the same being elapsed by the Rules of the Court.

Your Petitioner therefore humbly prays your Honour, that the faid Decretal Order may be entred nunc pro tunc.

And your Petitioner, &c.

Court what are concerned for the faid

Petition to fign and inrol a Decree nunc

Between A. B. Plaintiff, C. D. Defendant.

To the Right bonourable, &c.

The bumble Petition of the Plaintiff,

Sheweth, ....

THAT the Time for figning and inrolling the Decree in this Cause is elapsed, according to the strict Rules of the Court.

Your Petitioner therefore humbly prays your Honour, that he may be at Liberty to fign and inrol the faid Decree nunc pro tune.

And your Petitioner Shall ever pray, &c.

A Petition for an Infant to convey, purfuant to Stat. 7 Ann.

To the Right Honourable, &c.

The humble Petition of M.C. Widow and Administratrix of J. C. Esq; deceased.

Sheweth,

THAT by Indentures of Lease and Release bearing Date the 26th and 27th Days of July 1728. the said Indenture of Release, being Tripartite, and made between N. K.

N. K. of the Town and County of S. Merchant of the first Part, T. M. of the faid Town and County, Merchant, and E. his Wife of the fecond Part, and your Petitioner's faid late Husband by the Name of 7. C. of 7. in the County of S. Efq; of the third Part, reciting as in the faid Indenture of Releafe is recited, and for the Confiderations therein mentioned, the faid N. K. T. M. and B. his Wife did grant, release and convey. unto the faid 7. C. all that Capital Meffuage or Mansion-House, called or known by the Name of B. H. otherwise ..... with its Rights, Members and Appurtenances, fituate and being in the Town of S. aforefaid. To hold to the faid 7. C. his Heirs and Affigns, subject to a certain Condition or Proviso of Redemption on the Payment of the principal Sum of one Thousand Pounds and Interest, by the said I. M. and B. his Wife, or either of them, their or either of their Heirs, Executors, Administrators or Affigns, to the faid 7. C. his Heirs, Executors, Administrators or Assigns, on the Day of December then next

That the said Money was not paid according to the said Condition or Proviso, and there now remains justly due and owing to the Estate of the said J. C. upon the said Mortgage the principal Sum of eight Hundred Pounds, with a considerable Arrear of Interest.

That the said J. C. the Mortgagee is lately dead intestate, leaving J. C. his Son and Heir at Law an Infant, under the Age of Twenty-one Years, and your Petitioner being the Widow of the said J. C. deceased, hath duly obtained Letters of Administra-

tion

amongst other Things, become intitled to the principal Money and Interest now re-

maining due on the faid Mortgage.

That the Petitioner is advised that the said J. C. the Infant, is a Trustee of the legal Estate of the said Mortgage, for the Benefit of your Petitioner, and enabled to convey within the Intent and Meaning of the Statute made in the 7th Year of the Reign of her late Majesty Queen Anne, intitled, An Ast to enable Infants who are seised or possessed of Estates in Fee in Trust, or by Way of Mortgage to make Conveyances of such Estates.

Your Petitioner therefore humbly prays, that your Honour will be pleafed to order the faid J. C. the Infant to convey his legal Estate in the said mort-gaged Premisses to your Petitioner, or as she shall direct; or that your Honour will make such other Order for your Petitioner's Relief, as to your Honour shall seem meet.

And your Petitioner, &c.

and there now remains infini

8 7an. 1733.

Let it be referr'd to Master—to examine and certify whether this is a Mortgage within the Meaning of the said As, and how much is due, and to whom the Mortgage Money doth belong, and after the Master shall have made his Report such farther Order shall be made as shall be just.

A Petition

A Petition for a Person come of Age to enlarge Time for shewing Cause against a Decree.

> Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Defendant,

Sheweth,

HAT upon hearing this Cause before your Honour the - Day of-1740. your Petitioner being then an Infant, it was amongst other Things decreed, That in Default of your Petitioner's paying what should be certified due to the Plaintiff for Principal, Interest and Costs on the mortgaged Premisses in Question, at such Time and Place as the Master should appoint, that then your Petitioner might be absolutely foreclosed of all Equity of Redemption to the same, unless your Petitioner (being the Heir at Law) upon Service of a Subpana for that Purpose, should within six Months, after he attains his Age of twenty-one Years, shew good Cause to the contrary.

That your Petitioner about three Months fince attained his Age of twenty-one Years, and hath been ferved with a Subpana ac-

cordingly.

That by Reason of the Vacation your Petitioner cannot apply to shew Cause against against the said Decree, if he should be advised so to do, and for that the Plaintiff cannot be a Sufferer being in Possession of the Premisses.

Your Petitioner therefore most humbly prays your Honour, that he may have till the End of the next Term, for that Purpose, and that in the mean time the said Plaintiff may be stayed from making the said Decree absolute against your Petitioner.

And your Petitioner, &c.

Petition to tax a Solicitor's Bill of Costs.

To the Right Honourable, &c.

The bumble Petition of A. B.

Sheweth,

THAT your Petitioner fometime fince employed one Mr. C. D. one of the Solicitors of this Court to profecute, folicit and defend for your Petitioner diverse Suits depending in this Court, and feveral other Matters as your Petitioner's Attorney and Solicitor.

That the said Suits and Matters being all long since concluded; your Petitioner hath often applied to the said Mr. D. to make out his Bill of Fees and Disbursements, and to give your Petitioner an Account of what Monies he had received of your Petitioner for and on Account of the same, and to give up and deliver to your Petitioner all his Deeds, Papers, Writings, Books of

Account and Vouchers which he hath or ever had, belonging to your Petitioner; your Petitioner at the same Time offering to pay and satisfy the said Mr. D. for what should appear to be justly due to him. But the said Mr. D. hath hitherto neglected to do the same.

Your Petitioner therefore most humbly prays your Honour, that the faid Mr. C. D. may be ordered to deliver to your Petitioner his Bill of Fees and Disbursements, and that the same may be referred to one of the Masters of this Court to be taxed, and that the faid Mr. D. may be examined upon Interrogatories, or account upon Oath, as the Master shall think fit, as to all Sums received or paid by or to the faid Mr. D. or to his Use on Account thereof, or touching any Articles or Charges in his faid Bill, and that on Payment of what (if any thing) shall appear due to the faid Mr. D. or in Case he is overpaid, that he may refund and repay to your Petitioner the Overplus, and that he may be ordered to deliver to your Petitioner upon Oath, all Deeds, Papers, Writings, Books of Account and Vouchers, which he hath, or ever had of or belonging to your Petitioner; your Petitioner hereby fubmitting to pay what shall appear due to the faid Mr. D. and that all Proceedings against your Petitioner may in the mean Time be stayed till the Master shall have made his Report.

And your Petitioner, &c.

Another

Another of the like Kind upon a Bill delivered.

Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable, &c.

The bumble Petition of the Plaintiff,

Sheweth,

THAT your Petitioner employed one Mr. G. H. one of the Solicitors of this Court to profecute and folicit this Suit.

That the faid Mr. G. hath delivered a Bill of Fees and Disbursements to your Petitioner, which your Petitioner conceives to be very extravagant; and the said Mr. G. H. threatens to sue your Petitioner for the same, tho' your Petitioner was always, and is still ready and willing, and hereby offers to pay the said Mr. G. his just Fees and Disbursements.

Your Petitioner therefore most humbly prays your Honour, that it may be referred to one of the Masters of this Court to tax the said Mr. G.'s. Bill, and that all Proceedings at Law in the mean time may be stayed.

And your Petitioner, &c.

## Of Motions.

A Motion is the Request of a Party, made ore tenus to the Court by his Counsel. And a Motion of Course is, where by a standing Rule, or the known Course of the Court, the Thing requested is to be granted without hearing both Sides: On these Motions no Notice is necessary; nor will the Court hear any Desence against Motions of Course, but the Adverse Party may move to set them aside, if the Orders so obtained be to his Prejudice, or obtained upon a false Suggestion. And note; most Matters of Course may be granted on Petition as well as on moving the Court.

Other Motions there are, which would be also of Course, if the Facts alledged stood single by themselves; but because there may be some other Fact or Circumstance in the Case, lock'd up in the Breast of the Party, which the Court cannot then see, and such Motion requested seems to be of an extraordinary Nature; therefore in such Cases the Court usually grants such Orders only Niss,

altho' there be Notice given.

There are likewise other Motions which are not grounded on the general Rules of the Court, but are sometimes besides, or against it; and these are granted or denied according to the Discretion of the Court, after hearing Counsel on both Sides.

All Motions made on extraordinary Occafions are very rarely granted without Notice; and generally in such Cases an Affidavit of

L

the Facts alledged must be read in Court. And before any such Motion is made, and not desended by the adverse Party, an Assidavit of Notice must be siled, and a Copy thereof produced under the Hand of the Register of the Assidavit-Office or his Deputy, if you think you shall need to prove your Notice. And Notices of Motion must be in Writing and every Thing the Party moves for should be expressed therein; and they must be signed by the Clerk in Court, Attorney or Solicitor, otherwise they are not good.

They must be served upon the adverse Party, or, which is most usual, on his Clerk in Court; or delivered at his Seat to his Clerk or Agent. And they are to be served two Days before the Motion be made; as if the Motion is to be made on Thursday, the Notice must be given at least on Tuesday. But 'tis not good to serve a Notice on Saturday, (but on Friday) to move on Minday; Sunday not being reckon'd a Day in such Cases.

A Notice of Motion to receive Money out of Court must be served personally, on the adverse Party, unless the Court upon a sormer Motion has ordered so many Days Notice to the Clerk in Court, as may be sufficient to send his Client Notice, and to have his Answer; or if he be in the Kingdom, but hard to be sound, upon an Affidavit thereof, such Notice may be order'd to be served on the Clerk in Court.

Motions may stand over to be heard another Day where the Court thinks fit. And if a Notice of Motion be given thrice and not moved, the Party giving it shall not move the the same Notice a fourth Time: But the adverse Counsel, upon producing these four Notices,

T

nor

Cau

his I

Notices, may pray the Court that the Party may pay the Costs of the three former Notices before he moves the fourth Notice; which the Court generally Orders: And if it be a Matter of Weight, and many Counfel fee'd, the Court will order Costs to be

tax'd by a Master.

In Term, every Tuesday, Thursday and Saturday, are Days for sealing Writs, except they be such Holydays when the Court don't sit. And Motions of Course are usually made every Day in Term at the rising of the Court, after the Causes are heard. But every Thursday in Term is appointed by the Court to hear Motions in general; and no Causes are heard that Day: And so are the first and last Days of the Term for Motions only.

In the Vacation, only the Seal-Days appointed by the Chancellor are Days of Motion; but the Morning after Term, Motions

are made at the Rolls.

And a Notice of Motion may be in this Manner.

Between A. B. Plaintiff, C. D. Defendant.

In Chancery.

t

e

if

e

1-

,

THE Defendant intends to move the Court on Thursday next, [if in the Vacation you add "being the first Gene"ral Seal,"] or so soon after as Counsel can be heard, that the Time for redeeming the mortgaged Premisses in Question in this Cause may be enlarged for three Months, this being the—Day of—1744.

H. Solicitor for the Defendant.

## Of References.

A Reference is an Order of Court, whereby divers Matters, as Exceptions, Accounts, &c. are referr'd to a Master to examine, and make his Reports therein; to the End that the Court may make an Order absolute and determine such Matters.

And fometimes Masters are impowered, by the Order of Reference, to determine the Matters therein mentioned, as to tax Costs and Exceptions to Answers: But Reports of the Insufficiency of Answers may be excepted to for the Determination and Opinion of the Court.

References are generally made to one of

the Sitting Masters.

No Reference shall be made of the Insufficiency of an Answer, without alledging the Special Causes in the Exceptions. And a Reference of the State of the Case is but rarely granted; except by Consent of Parties, and the Special Order of the Court, where the Court orders the Master to state such a Matter of Fact specially to the Court.

And no Reference shall be made upon a Demurrer, or Question, touching the Juridiction of the Court; but such Demurrer, &c. shall be heard and determined by the Court.

After Examination of Witnesses, no Reference is to be made to a Master to determine the Matter, unless by the Special Order of the Court, and by Consent of the Parties. Vide Totb. 47, 48. But a Cause may, by Consent, be referred to Arbitrators; and their

their Arbitration will be in Nature of a Report (which Arbitration must be confirmed by the Court like a Report;) and fuch Arbitration may be also excepted to, and those Exceptions determined by the Court. Upon hearing Causes, all Matters of Account, and other Matters, (except in Cases of very great weight) which are determin'd by the Court, are generally referr'd to a Master, with some Directions how to proceed therein, and in making his Report. And upon Application to the Court, by Confent of Parties, Accounts may be examin'd into before Hearing: But the common Method now, is not to examine to a Matter of Account till after Hearing. which is is to be before a Master, if the Witnesses be in Town, &c. but if they are not, then by Commission directed by the Master; upon an Order. Vide Grd. Chan. 156.

The Order of Reference being produced and shewn to the Master, or left at his Office, at the Request of the Party his Clerk in Court or Solicitor, he issues a Warrant appointing a Time and Place, usually his Chanbers, for the Parties concerned to attend him: which being ferved on the adverse Party's Clerk in Court by shewing it and delivering a Copy; if he attends not, the Master will grant a fecond Warrant, appointing a further Day; and if he does not attend, a third Warrant issues, which is commonly called a Peremptory Warrant; and then not attending pursuant thereto, the Master, on Oath of ferving the three Warrants on the adverse Clerk in Court, or on his Clerk or Agent at his Seat, will proceed and make his Report Ex parts, of that Side that attends and defires it. And Parties may at-

L 3

tend

.

3,

0

a

1-

c.

rt.

e-

r-

er

es.

by

nd

eir

tend the Master with their Counsel, Clerk, in Court, or Solicitor, or all of them, as

they see Cause.

And generally where a Matter of Account is referred before you form any Charge, you take out a Warrant to produce all Books, Papers. &c. which is usually

ordered by the Decree.

Note; It is usual to underwrite all your Warrants to shew for what they are taken out, and, and upon what to be attended, as that "The Plaintiff has left his Charge," and after the first Warrant, "To proceed on the Plaintiff's Charge" and the like; but the first Warrant is seldom or never attended upon.

And if the Master cannot go through with the Matter referred to him upon the second Warrant, you may take out a third, fourth, &c. and as many as you please till

he hath.

In Proceedings before the Master upon Accounts, or Taxation of Costs, Vouchers are generally expected for such Things as do not certainly appear in themselves, or as a necessary Consequence of some other Thing already proved or certain, or where there is not a violent Presumption, &c. Therefore is not a violent Presumption, &c. Therefore it adviseable to preserve all Papers and Writings whatsoever relating to the Cause, which if not admitted by the other Side, must be proved, before the Master can allow them as Evidence.

And if either Party, by his Counfel, Clerk or Solicitor, admits a Matter of Fact, the Master ought to make an Entry thereof in his Minute Book, which the Party admitting in his Presence subscribes; and this is conclusive to such Party, and the other Side shall not be put to any Proof of that Matter. Vide Ord. Chan. 254.

Regularly no Person is at Liberty to object or defend the Proceeding before the Master upon any Account, or taxing Costs, but such of the Parties as shall actually pay for an Office-Copy of such Account or Bill of Costs from the Master

Costs from the Master.

In Matters of Account where Sums are Forty Shillings or under, then the Party making an Affidavit in Writing before the Mafter (if the Party lives in Town, or if in the Country, before a Master Extraordinary) that such Sums have actually been paid, they will be allowed by the Master on the Party's own Oath; but if such Sums are above Forty Shillings, the Party must examine Witnesses before the Master, or by Commission, to prove those Sums paid, unless the other Side will admit such Sums to be paid.

Is here, My expected for (uch Thingse, de fire certainly appear in themlelves, or as a selection of the Content Thing attended from other Thing attended provided or certains or where there is a real fire on Present Present on, St. 'I here ore

The siere what he ver feeleting to the Challe with although for a dim red by the other Shird me Public proved, before all Malter called low them as Evidence.

anne cash a Profesioner Alighert State and Anna and Anna

A new enthory never as Counted, Clerk

To solience, edining Twanter of Lack, the

Analter solience to the an Entry introckin

this M. Rates Book, continuitie Party before

## Of Reports.

A Report is a Master's Certificate to the Court, how the Facts or Matters referred by the Court are, or do upon Examination appear unto him, or of something which is his Duty to inform the Court of.

No Master shall, on the Importunity of Counsel, or any other Person, make a special Report, unless required by the Court to do so; or that his own Judgment, with Respect to Difficulty, leads him thereto.

Ord. Chan. 144.

And by the same Order, Reports must be drawn as succincily as may be, (reserving the Matter clearly for the Judgment of the Court) and without Recital of the several Points of the Order of Reservince, or the Debates of Counsel; unless in Cases where the Masters are doubtful, they briefly represent the Reasons inducing them so to be.

Where a certain Time was prefix'd for making a Report, and it was made after that Time, it was disallowed. Vide 1 Chan. Ca. 179. and generally, if the Court by an Order prefix a Time, and the Master makes his Report after that Time, it is irregular.

In Proceedings before the Master, when he hath sully heard both Parties, he prepares a Draught of his Report, and at the Request of either Party issues a Warrant, that the Parties or some of them do again attend him; who have Liberty to peruse such Report, and take Copies thereof, and after that, either Party may again attend the Master, and take out a four Day Warrant, (which is a Warrant returnable in four Days after Date)

Date) and underwrite fuch Warrant, at which Time the Mafter will fign his Report; which the Master accordingly will sign, unless either Party do at that Time bring in Objections in Writing to the Draught of fuch Report, and take out a Warrant, giving Notice that he has brought in Objections to the Draught of fuch Report; and then the adverseParty takes a Copy of such Objections from the Master; and either Party may take out one or more Warrants to be heard thereupon, and the Master allows or disallows the Objections, as he fees Caufe, and fettles his Report. Tho' after the Mafter hath made his Report, either Party may take Exceptions to it, which must be argued in open Court. Bur, Note, the Party cannot regularly file Exceptions to any Report after the Hearing, unless he first bring in Objections to the Draught of the Report, and be heard before the Master thereupon; otherwife fuch Party gives the Court unnecessary Trouble, and creates unnecessary Expence to the other Party in bringing Exceptions to be determined by the Court, which probably might have been determined before the Master, and allowed by him, on arguing before him the Objections to the Draughe of his Report.

And these Exceptions must be filed with the Register, at which Time you pay him Five Pounds in order to answer the Costs in Case it is for Delay or other frivolous Matter, or your Exceptions are over-ruled, and then you petition my Lord Chancellor for a Day to set them down, of which Notice must be given to the other Side, by serving a Copy of the Order on the Clerk

in Court, and before the Day of Hearing, you must make his Lordship a Copy of the Report and Exceptions, which you leave with my Lord's Gentleman with Five Shillings.

And upon arguing the Exceptions no Evidence will be admitted in Support thereof, but what was laid before the Master upon the Objections. Primrose and Bromley,

Mich. Vacation 1739.

Where a Defective Account is carried in before the Master, you should object to such Defects, and that the same be made perfect before him, for the Court will not afterwards make any Order thereupon.

When the Court by special Order shall admit Exceptions to any Report, whereby Money is reported due; after the Time such Exceptions should have been regularly filed, no Proceedings on such Report shall be stayed without giving Security to pay the Money, or bringing it into Court, unless the Court shall provide otherwise by particular Order. Ord. Chan. 203.

Reports and Certificates are to be filed with the Register in four Days after Signing; and he is to mark on the Back the Day of their Receipt and Filing. And all Proceedings grounded on Reports not so filed shall be void; and the Register's Certificate of such Neglect shall be good Cause to discharge such Proceedings, and for Costs according to the Discretion of the Court. Ord. Chan. 237. But this Rule of filing Reports and Certificates in four Days is almost disused, and they are frequently filed afterwards.

On a Report to ground a Decree after it is figned by the Master, no Order can be

had to confirm it, till it be filed with the Regifter, and then an Order is obtained to confirm the Report, unless the adverse Party being personally served with such Order. shall in eight Days after such Service shewgood Cause to the contrary; and then the other Party has eight Days from the Service to except to it: But if the Report be made before Hearing, it needs no Confirmation, but Process may be taken out to enforce the Performance, &c without farther Motion; unless the adverse Party do in due Time obtain some Order of Court to control or sufpend the same. And such Order of Control must be obtained immediately after such Report is filed, either in Term, or during the General Seals after; but tho' the eight Days be past, yet if it be but lately, the Court will, upon Motion, order Exceptions to be received, and the Party to procure a Report in a short Time. But no Report after Hearing is valid, unless it be confirmed by Order of the Court; which is confirmed by Order unless Cause as before: And if no Cause is shewn against such Report in eight Days after personal Service, then upon Affidavit of fuch Service, and taking the Entring Regifter's Certificate on fuch Order (which Certificate must be figned by any one of the Registers) that no Cause is shewn against that Order, then upon fuch Affidavit and Certificate on the faid Order, Counfel moves of Course to make such Order absolute; and then the faid Report is absolutely confirmed.

But where you cannot ferve the Order Nisi personally, or where the Defendants are numerous and live in different Counties

Affidavit thereof, the Court will make Service on the Clerk in Court good. For an Affidavit where the Defendants live in different Counties, and a Petition that Service on the Clerks in Court may be good, wide under the Title of Affidavits and Petitions.

Upon a Dismission with Costs to be taxed by a Master, there needs no Confirmation of his Report, but a Subpana for Costs, after the Report filed, may be forthwith taken out: And if an Answer be reported insufficient, one Subpana for the Costs, and another Subpana to make a better Answer returnable immediate, may be issued immediately; that for the Costs must be served on the Party personally; and that to make a better Answer may be served on the Party's Clerk in Court.

A Report being filed, the adverse Party may give an Authority to his Counsel to consent that such Report be absolutely confirmed; and such Counsel consenting, the Court will so order it: Bur without such Consent the Court will only order it to be consirmed, unless Cause as before. And if, after a Report is consirmed Niss, a Party obtains Leave for the Master to review it (which is very rarely granted) he must pay such Costs as the Court shall think fit.

The Court will but very feldom, and that in special Cases, stir a Report after it is confirmed, because the Parties had sufficient Time to except to it; much less will the Court alter it without extraordinary and sufficient Reasons, if it was confirmed by

Consent of Parties.

Note: There is no Occasion to serve a

Report.

If the Court orders an Estate to be fold by the Master to the best Purchaser that can be got, such Purchaser, or some Person authorized by him, must appear before the Master and subscribe his Book, offering to give fuch a Sum of Money for the Estate mentioned in the Particular, or Abstract thereof left with the Master, upon such Purchaser's having a good Title made and executed to him thereof: And fuch Purchafer must pay to the Master, or his Clerk, for fuch Subscription, Two Shillings and Six-pence; and if no one bids more, the Master will grant a Certificate or Report of fuch Purchaser's bidding such a Sum of Money for the Estate; and no one bidding more, the Master allows him to be the best Purchaser: which Certificate or Report being filed, the Purchaser's Counsel move to confirm it unless Cause; and all Parties concerned being personally served with such Order. and no Cause being shewn in eight Days after, as before; then upon Affidavit and Certificate, as before, Counfel moves to make the Order Nife absolute: But if any of the Parties be not fatisfied with fuch Bidding, the Court, on Motion, will fend them back to the Master for a few Days, to see if a better Purchaser can be found.

### A Report of the Arrears of an Annuity.

Between A. B. Plaintiff, C. D. Executor of E. F. & al.' Defendants.

March 3. 1743.

IN Pursuance of the Order made on the Hearing of this Cause, bearing date the Tenth Day of December laft, I have been attended by the Solicitor for the Plaintiff, and the Defendant C. D. (no Person attending for the other Defendants, although duly fummoned, as by Oath made before me appeared) and I have, in the Prefence of the Parties fo attending me, proceeded to take an Account of what was in Arrear for the Annuity, or yearly Rent-Charge, of twenty Pounds a Year in Question in this Cause, during the Time the said E. F. the Testator, was in Possession of the Estate mentioned in the Pleadings of this Caufe; and I do find, that in the Month of October 1734. G. H. Brother of J. K. who was the eldest Son of L. M. Nephew of N. O. in the Pleadings of this Cause named, died without Issue Male; and that on the Death of the faid G. H. the faid Annuity of twenty Pounds a Year vested in the said Plaintiff A. B. by the Will and Codicil of the faid N.O. And I do find, that on the Death of the faid G. H. the faid Testator E. F. was then in the full and absolute Possession of the Trust Estate of the said N. O. charged therewith, and so continued till

till the Month of April 1738. And I further find, that on the first Day of February 1734. there became due to the faid Plaintiff A. B. for Half a Year of the faid Annuity, the Sum of 10 1 and that during the Time the faid Testator continued in the Posfession of the said Estate as aforesaid, the said Plaintiff A. B. became intitled to three Years more of the faid Annuity, viz. for one Year due the first of February 1735. the Sum of 201. for another Year due the first of February 1736, the Sum of 201, and for another Year due the first of February 1737. the Sum of 201 which together with the faid Sum of 101. make together the Sum of 701. but it being directed, by the faid Order, that I should deduct the Taxes out of the faid Annuity according to the Rate the Lands, whereout the same doth issue, have paid to the Land-Tax; I find, that the faid Lands have been rated but as a Moiety of the Land-Tax as allowed by the Acts of Parliament for these Years: I have, therefore, in the Schedule to this my Report annexed, stated the Rules of the Land-Tax as allowed by Parliament, for the faid Years, and what is to be deducted out of the faid Annuity according as the faid Lands were yearly rated, and the same in the whole amounts to 61. which I have deducted from the faid Sum of 70 1. whereby the same is reduced to the Sum of 641. for which Sum I have, according to the Directions of the faid Order, computed Interest from the Filing of the Plaintiff's Bill, which was on the fourth of November 1742. to the twenty-third Day of March Instant, beOf Interlocutory Matters.

ing one Year, four Months and nineteen Days after the Rate of 41. per Cent. per Ann. and the same amounts to the Sum of 81. 125. o. d. which being added to the said Sum of 641. make together the Sum of 671. 125. o. d. and which said Sum 671. 125. o. d. I do appoint the said Defendant C. D. to pay unto the Plaintiff A. B. on the said twenty third Day of March Instant at the Chapel of the Rolls in Chancery Lane between the Hours of ten and twelve of the Clock in the Forenoon of the same Day. All which I humbly certify and submit to the Judgment of this Honourable Court.

T. W.

### The Schedule to which my Report refers.

First out of the half Year's Annuity due the first of February 1734. which that Year was 2 s. in the Pound to be deducted one Moiety of the Land-Tax, which amounts to.

Also out of one Year's Annuity due the first Day of February 1735. which that Year was 3 s. in the Pound, to be deducted one Moiety of the Land-Tax, which amounts to

Also out of one Year's Annuity due the first of February 1736. which that Year was 45. in the Pound to be deducted one Moiety of the Land-Tax, which amounts to

Also out of one Year's Annuity due the first of February
1737, which that Year was 4s.
in the Pound to be deducted, one
Moiety of the Land-Tax, which
amounts to

66 00 00

T. W.

A Report

AReport of passing a Receiver's Account.

Between A. B. Plaintiff, C. D. Defendant.

June 23. 1744

TN Pursuance of the Order made upon the Hearing of this Cause, the twentyfixth Day of November 1734. and of a subfequent Order of the ninth Day of May 1735. I have been attended by E. F. Receiver of the Rents and Profits of those Parts of the Estates in Question in this Cause, which lye in T. in the County of W. and by the Solicitors for the Parties, and the faid Receiver having brought before me an Account of the Rents and Profits of the faid Estate, and of his Payments and Allowances thereout for Taxes and Repairs for one Year ending at Lady-Day 1743. which Account containing likewife a Rental of the faid Estate, is contained in one Sheet of Paper marked with the Letter (H), which now remains with me ready to be produced as this Court shall direct. I have in the Presence of the said Receiver, as also in the Presence of the Solicitors for the Plaintiff and Defendant, proceeded to take the faid Account. And I find, that the faid Receiver hath received, by and out of the faid Rents and Profits for that Year, the feveral Sums of Money contained in the fourth Column of the faid Account intitled (Money received) amounting together to the Sum of 4651. IIs. . 2 d. and that he hath

Df Reports.

hath allowed to feveral Tenants of the faid Estate, for Taxes and Repairs, the several Sums contained in the fecond and third Columns of the faid Account intitled (Allowances) and (Land-Tax) amounting together to the Sum of 85 l. 5 s. 2 d. of which I have made him an Allowance; and which being added to the faid Sum of 465 l. 11 s. 2 d. received as aforesaid, makes the Sum of 550 l. 16 s. 4 d. which is the Amount of the Rental of the faid Estate, for the faid Year, as appears by the first Column of the faid Account (intitled Yearly Rents) And I do not find, that there are any Arrears of Rent of the faid Estate standing out unreceived, fave those mentioned in the first Schedule to my Report dated 12. June 1740. All which Arrears are of a long standing and deemed desperate. And I find, that over and above the Allowances therein beforementioned to have been made to the faid Receiver, he hath paid, and is to be allowed for Rent and Quit-Rent iffuing and payable out of the faid Estate for his Salary, as Receiver, and Charges of passing his Accounts, the several Sums of Money mentioned, and fet forth in the Schedule to this my Report annexed, amounting together to the Sum of 421. 7 s. 8 d. which being deducted out of the faid Sum of 465 l. 11 s. 2d. reduces the same to the Sum of 423 l. 3 s. 6 d. And I find, by my Report made in this Cause the twenty-fourth Day of June 1742. that upon the Foot of the faid Receiver's Account to Lady-Day 1741. therein stated and allowed, there remained in his Hands a clear Balance of 347 l. 10s. 1 d. which be-M 2

#### Of Interlocutory Matters.

ing added to the said Sum of 423 l. 3 s. 6 d. makes the Sum of 770 l. 13 s. 7 d. which is the clear Balance remaining in the said Receiver's Hands upon the Foot of his Account to and at Lady-Day 1742. All which I humbly certify and submit to this Honourable Court.

T. W.

The Schedule mentioned in, and referred unto by the foregoing Report, containing an Account of Allowances craved and made by E. F. the Receiver for several Payments by him made (over and besides the Allowances to Tenants) and otherwise.

Paid a Year's Quit-Rent to N.O. Esq; for Part of the said Premisses due at Lady-Day 1742.

Paid a Year's Quit-Rent to P. Q. for other Part of the faid Premiffes 1.—s.—d. after deducting —Taxes due at Lady-Day 1742.

Allow'd the Receiver for one? Year's Salary due Lady-Day, 1742.

Allowed ditto for Charges of 2

T. W.

Note; Upon having an Order to appoint a Receiver, you take out a Warrant, underwriting that such a one, mentioning where he

he lives, is to be approved of by the Master to be Receiver, and that such, and such a one, naming two Persons, mentioning where they live, are to be his Security, for all Receivers must enter into a Recognizance with two Securities before the Master to account regularly.

A Report of Principal, Interest and Costs
upon a Mortgage.

cal and interest on his laid Mor vace on the

Between A. B. Plaintiff,

February 9. 1744 of Trained bill and on

TN Pursuance of the Order made on the I Hearing of this Caule, bearing date the tenth Day of October 1744. I have been attended by the Solicitors for all Parties; and in their Presence, I have considered of the Matters thereby to me referred. And I have proceeded to take an Account of what is due to the Plaintiff for Principal and Interest on his Mortgage on the Premisses in Question in this Cause. And I find, that there is due to the faid Plaintiff, on his Mortgage bearing Date the eighth Day of October 1736. the principal Sum of 6001. And I have computed Interest for the faid Principal Sum of 6001. after the Rate of 51. per Cent. per Ann. from the faid 18th Day of October 1736. to the third Day of September 1744. being fix Months after the Date of this Report; and the same being for seven Years, nine Months and forty M 3 feven

feven Days, amounts to the Sum of 2361 7 s. 3 d. whereout being deducted the Sum of 90% which I find the faid Plaintiff hath received on Account of Interest on his faid Mortgage, there remains the Sum of 146 L. 7 s. 3 d. which being added to the faid Sum of 600 l. make together the Sum of 746 l. 7 s. 3 d. due to the said Plaintiff for Principal and Interest on his said Mortgage on the faid third Day of September next. have considered of the said Plaintiff's Bill of Costs, amounting to the Sum of 891. s. 6 d. which I have moderated and taxed at the Sum of 67 1. 19. 6 d. which being added to the faid Sum 746 l. 7 s. 3 d. make in the whole the Sum of 8141. 6s. 9d. due to the faid Plaintiff for Principal, Interest and Costs on his faid Mortgage, on the faid third Day of September next; and which faid Sum of 8141. 6s. 9d. I do appoint the Defendant to pay to the faid Plaintiff on the faid third Day of September next between the Hours of ten and twelve of the Clock in the Forenoon of the same Day. at the Chapel of the Rolls in Chancery-Lane. All which I humbly certify to this Honourable Court.

T. W.

If a Mortgagor is apprehensive that the Estate is worth more than the Money reported due, and wants Time to raise Money to pay off the Mortgage, the Court upon Application, and an Assidavit of the Value, will usually enlarge the Time to redeem for six Months, and refer it back to

the Master to tax the subsequent Costs, and carry on the subsequent Account: And upon further Application will enlarge the Time for three Months, which upon extraordinary Occasions the Court will order peremptory, and for the Mortgagor to sign the Register's Book that he will not crave

any further Time.

But in these Cases the Court has a discretionary Power, and always act according to the Circumstances of the Case; for if the Estate is worth a good deal more than the Money reported due, they will not let a Mortgagor be foreclosed immediately, but give him all reasonable Opportunities to redeem, where it is not an apparent Intent of Delay. And even after the Time appointed for Payment, the Court will, at any Time before the Mortgagee has obtained an Order to foreclose, give the Mortgagor a Time; but all Applications for Time to redeem should regularly be made before the Time appointed is expired.

But if a Mortgagor cannot make more of his Estate, but will let it go, the Mortgagee must after the Expiration of the six Months apply to the Court for an absolute Order to redeem, which must be upon an Assidavit of the Mortgagee's attending at the Time and Place mentioned in the Report, and at the same Time producing and reading to the Court the Decree, and all Proceedings thereupon; and note, that this is a Motion of Course.

For the Form of this Affidavit, vide under that Head.

None but the Mortgagee, or the Person appointed by the Report, can receive the Money reported due, unless they be appointed by Letter of Attorney under his Hand and Seal. And then the Person appointed, if the Money is not paid, makes an Affidavit thereof, and then you proceed as before.

The Form of a Letter of Attorney to receive Money reported due at the Time appointed by a Master's Report.

O all to whom these Presents shall come, A. B. of, &c. fendeth Greeting. Whereas T. W. Efq; one of the Masters of the High Court of Chancery, by his Report bearing Date on or about the third Day of March last past, made in a certain Cause depending in the said High Court of Chancery, wherein the faid A. B. is Plaintiff, and C. D. is Defendant, certified, that in Pursuance of an Order made on the Hearing of the faid Caufe, bearing Date the nineteenth Day of Rebruary 1742. he had been attended by the Solicitors for all Parties, and in their Presence had considered of the Matters thereby to him referred, and had proceeded to take an Account of what was due to the Plaintiff for Principal and Interest on his Mortgage on the Premiffes in Question in the faid Cause, and to tax him his Costs of the faid Suit; and found, that the Sum of 814h 16s. 9d. would be due to the Plaintiff for Principal, Interest and Costs on his said Mortgage on the

the third Day of September next; And which faid Sum of 8141. 6s. 9d. the faid Mafter thereby appointed the faid Defendant to pay to the faid Plaintiff on the faid third Day of September next at the Chapel of the Rolls in Chancery-Lane, London, between the Hours of eleven and twelve of the Clock in the Forenoon of the same Day: As in and by the faid in part recited Report, Relation being thereunto had, may more fully and at large appear: Now Know ye, that I the faid A. B. have made, ordained, constituted and appointed, and by these Presents, Do make, ordain, constitute and appoint E. F. of, &c. and G. H. of, &c. my true and lawful Attorney and Attornies, jointly and feverally, hereby giving and granting full Power and Authority, for them my faid Attornies, or either of them, to attend at the faid Chapel of the Rolls according to the faid Report, and for me, and in my Name, and to my Use, to ask, demand, and receive of and from the faid C. D. the faid Sum of 8141. 6 s. 9 d. And upon Payment of the faid Sum of 8141. 6 s. 9 d. or any Part thereof, Receipts, Acquittances, and other proper Discharges in the Name of me the faid A. B. to make and give for the same, and to deliver, and furrender up the faid Mortgage, Security, and all other my Security and Securities for the same, and generally to do and transact any other Act, Matter or Thing for the obtaining and receiving the same Sum of 8141. 6s. 9d. to the Use of me the said A. B. as fully as I myself could or might do, if I was personally present: I the said

A. B. hereby ratifying and confirming, and agreeing to ratify and confirm all and whatsoever my said Attornies, or either of them, jointly or severally shall lawfully do, or cause to be done, in and about the Premisses. In Witness whereof, I the said A. B. have hereunto set my Hand and Seal this——Day of——in the eighteenth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and so forth, and in the Year of our Lord 1744.

enos enistro comerciale amales a siente ap

demand, and receive of and four the fact of the fact o

bus con fair or businessand to defect, and

and ablication may become many or material of the first formation of the state of t

has your half the telenge however has your A. B.

Sealed and delivered
(being first duly
stampt) in the Presence of

# Of Certificates.

amo k editio, bapath minormas and

A Certificate generally is a Matter in Writing under the Hand or Hands of Mafters, Officers, or Ministers of the Court, informing the Court of something under their respective Administrations, or Cognizance, that is done, not done, or missione; which an Order or Mandate of the Court, or their Duty, or the Reason of the Thing requires them to acquaint the Court with.

These Certificates the Court gives much Credit to, especially from the Masters and

standing Officers of the Court.

In the Caption of Answers taken in the Country (which is a Certificate of the Commissioners) the Town and Country where, and the Day and Year when the Answer is sworn by the Defendant, ought to be in serted, otherwise the Answer may be suppress'd: So also in the Caption of Affidavits, Depositions, &c.

The Certificate of Commissioners of any Thing touching the Execution of their Commission, need not be filed before admitted to

be read, or made use of.

As touching all Matters relating to Irregularities in meer Matters of Practice of the Court; the Court, on Motion or Petition, usually orders such Matters to be referred to the two senior Six Clerks, not in the Cause, to certify whether such Proceeding or Process be regular or not; and according to their Certificate the Parties are to abide; and such Certificate cannot be excepted to without

without particular Leave of the Court,

which is very rarely granted.

After an Answer is filed, and no Proceedings in the Cause for three Terms after, you then acquaint the Plaintiff's Clerk in Court, usually by leaving a Note in Writing with him (which is a meer Matter of Favour, and not strictly obligatory) that you must dismiss the Bill for want of Profecution: And if he don't file a Replication to the Defendant's Answer in two or three Days after such Notice given, which is the usual Way to prevent a Bill from being dismiss'd, you then get the Six Clerk's Certificate the Day the Defendant's Answer was filed, fince which the Plaintiff bath not replied, nor further proceeded in the Caufe, as appears by his Book. And upon this Certificate you then get Counfel to move to dismiss the Plaintiff's Bill with Costs to be tax'd by a Master, which is a Motion of Courfe; and having drawn up and entred your Order, you carry it to the Mafter to whom it is referr'd, with your Bill of Cofts, which you leave with the Master, who gives you a Warrant to serve on the Plaintiff's Clerk; and underneath the Warrant write, the Defendant bath left a Bill of Cofts; and on the Return of the faid Warrant, you take out a second Warrant, and sometimes a third; and if no one attends on the other Side, upon producing the Warrants, and making Oath of the Service thereof on the Plaintiff's Clerk before the Master, he taxes the Costs ex parte, and signs a Report for the fame, which you must file, and take out a Subpana for these Costs from the Subpana-Office; which Subpana must be ferved perfonally on the Plaintiff, and the Costs demanded

manded of him, which if he refuses to pay, you make an Affidavit of the Service of the Subpana, and of your demanding the Sum of Money of him, and his Refusal to pay: And upon filing the Affidavit, and having an Office-Copy thereof, you carry it to the Defendant's Clerk in Court, and he makes you an Attachment directed to the Sheriff, to arrest the Plaintiff for Non-Payment of those Costs: which being done, and the Plaintiff refusing to pay those Costs, and also the Costs of the Arrest (which is twelve Shillings and Sixpence) he is carried to the County Gaol, where he must lie till he has paid those Costs: But if the Plaintiff absconds, and cannot be found personally to be served with such Subpana, upon Affidavit thereof, the Court will upon Motion or Petition, order that Service of fuch Subpana on the Plaintiff's Clerk in Court shall be deemed good Service; and upon fuch Subpana being ferved on the Plaintiff's Clerk in Court, and the Costs demanded of him, and his Refusal to pay the Costs, then, upon making and filing your Affidavit thereof, an Attachment is made against the Plaintiff for those Costs, as before; and upon. a Return by the Sheriff of a Non est inventus against the Plaintiff, a Proclamation issues against the Plaintiff; and upon the like Return thereof, a Commission of Rebellion directed to Commissioners; and upon their like Return, an Order for a Serjeant at Arms issues against the Plaintiff; and upon his like Return, and Certificate, you then obtain an Order for a Sequestration, directed to Commissioners to sequester the Plaintiff's real and personal Estate, until he shall have paid those Costs, and the Court make other Order to the

contrary; and the Plaintiff cannot discharge the Sequestration until he has paid not only those Costs, but also all the subsequent Costs

to be tax'd by a Master.

Note; When Process is thus carried on by Way of Non est inventus, there must be sifteen Days between the Teste and Return of each Process; but if you arrest the Plaintiff on such Process, there is no Occasion for sifteen Days hetween the Teste and Return: And this Rule holds good of all such Process that is made out against the Desendant for want of his Answer.

If the Plaintiff files a Replication to the Defendant's Answer, and proceeds no further in three Terms after the Replication filed, you then get the Six Clerk's Certificate thereof, and give Notice in Writing to the Plaintiff's Clerk in Court to move that the Plaintiff's Bill may be difmis'd out of Court, with Costs, to be tax'd by a Master: And upon making an Affidavit of ferving fuch Notice, and producing fuch Certificate, your Counsel moves to dismiss the Bill with Costs, to be tax'd by a Master; which is always granted, unless the Plaintiff's Counsel shews fome very urgent and fufficient Reason to the contrary; and in fuch Case the Court will order the Plaintiff to speed his Cause to a Hearing.

As foon as Publication is pass'd in the Cause, the Plaintiff gets his Six Clerks Certificate, that the Pleadings in the Cause are regularly filed, and Publication passed, and he has seen the Depositions; and upon such Certificate you get the Cause set down in Court, or at the Rolls either by the Six Clerk, or by one of the Secretaries, or by

the Register; and the Register will give you a Certificate thereof, which Certificate and Precipe for a Subpana you carry to the Subpæna-Office, where they will make you out a Subpana to hear Judgment, which you must serve on the Defendant (if he lives above ten Miles in the Country) fourteen Days before the Return thereof; and ten Days on the Defendant before the Return. if he lives in London, or within ten Miles thereof; unless it be between Easter and Trinity Terms, when by Reason of the Shortness of that Vacation, ten Days is held good for the Service of fuch Subpana on the former, and eight Days on the latter, between fuch Service and Return.

Where a Matter of Account or other Thing is referred to the Master, and 'you think it will be necessary, and indeed upon Matters of Account it is usual to let alone examining the Witnesses till after the Hearing, and it comes before the Master, to examine Witnesses with regard thereto, the Master upon Request will grant a Certificate for a Commission, upon which you

apply to the Court for the same.

Or where Interrogatories are exhibited for Examination of any of the Parties or Warrants are taken out to produce or do any other Matter ordered by the Court, who stands out till the Expiration of the third Warrant, or where any Witness, upon being served with a Subpana to testify, does not attend and put in his Examination, the Master or Examiner will grant a Certificate, and thereupon you may apply to the Court that they may stand committed for a Contempt.

A Certificate of a Defendant's not attending to be examined.

> Between A. B. Plaintiff, C. D. Defendant.

The Pon the Day of Interrogations of the Complainant in this Cause for the Examination of the Defendant touching a Contempt supposed to be by him committed for Breach of an Injunction obtained in this Cause, since which Time the said Defendant hath not attended to be examined thereupon. Dated this Day of 1744.

E. N.

A Six Clerk's Certificate of an Answer being filed, and no Proceedings fince, in Order to dismiss a Bill.

Between A. B. Plaintiff, C. D. Defendant,

THESE are to certify, that the Defendant's Answer to the Plaintiff's Bill was filed the — Day of — 1743. fince which there has been no further Proceeding, as appears by my Book; this being the — Day of — 1744.

# A Six Clerk's Certificate of no Proceeding after Replication.

Between A. B. Plaintiff, C. D. Defendant.

THESE are to certify, that the Defendant's Answer to the Plaintiff's Bill was filed the—Day of—1742. to which the Plaintiff replied the—Day of—1743. fince which there hath been no further Proceeding, as appears by my Book dated this—Day of—1744.

A Six Clerk's Certificate of Pleadings being filed in order to set down a Cause for Hearing.

Between A. B. Plaintiff, C. D. Defendant.

THESE are to certify, that the Plaintiff's Bill, and the Defendant's Answer, and the Plaintiff's Replication to the Defendant's Answer, are duly filed, as appears by my Book. And I have seen the Depositions published, dated this—Day of—1744. The like Certificate in order to set down a Cause upon Bill and Answer.

> Between A. B. Plaintiff, C. D. Defendant.

Of

01

for R

froi

### Of Orders.

INDER this Head, I don't design to treat of the general and standing Orders, nor of such Orders, as are made on Hearings; but the Orders here intended, are chiefly interlocutory Orders, such as are an-

tecedent to the Decree.

And here we may observe, that there are many Occasions intervening in a Cause which require Motions or Petitions to fet them right; now fuch Directions as are given by the Court on fuch Motions or Petitions, are commonly called Interlocutory Orders; and those Orders are of several Kinds, and are either of Courfe, or Special: Sometimes they relate to the profecuting or carrying on of a Cause, and fometimes they are touching Brocess, &c. At other Times they are founded on the standing Orders of the Court, and upon the particular Circumstances of the Case, and are made upon the Application of some Person, either Plaintiff or Defendant. interested in, or affected by the Cause. When they are made upon hearing Counfel on both Sides, Regard is always had to the general Rules of the Court; but when they are made by Confent of Parties, they are often out of the general Rules, or Course of the Court; in which Cases the special Reafons, moving the Court to vary from those Rules, are always express'd in such Order.

All Orders must be pronounced in Court, and drawn up by the then sitting Register, from his Minutes taken in Court; of which

N 2

Minutes

Minutes the Clerk in Court, or Solicitor of each Side, may take a Copy from the Regifter, in order to be informed of any Thing that is Special therein. And if in Special Cases any Difficulty or Doubt arises in the Minutes, the Parties may attend the Regifter about explaining them; and if by this Means they cannot be settled to the Satisfaction of both Parties, the Court may be applied to, either by Motion or Petition, but usually by Petition, to explain or amend them; and the Court will order the Register, and all Parties, to attend therein; when they attend by their Counfel; and the Court then makes such Order about rectifying the Minutes as they shall see Cause.

But with Respect to Orders of Course, or fuch Orders as are not in Special Cases, there is no Occasion to take a Copy of the Mi-

nutes, &c.

If you want an Order drawn up upon a Petition, you need only go to any one of the Registers for that Purpose, and with him leave the Petition: And if the Order be obtained upon Motion, then you may leave a Brief with him, or other proper Instructions, and from those and his Minutes he draws the Order, and after you have look'd it over, and feen that it is right, you must return it to be pass'd (ie. to have his Hand or Mark to it) which being done, you must leave it with one of the entring Registers to be entred; after which, and not before, you may regularly ferve it on the other Side; for all Orders must be pass'd and enter'd before allowed or ferved: And if either Party expects any Use or Benefit by an Order, it must be first drawn up, &c. The

The Register is to take down all Minutes truly; and in special Cases, and upon Hearings, they are usually, so soon as pronounced, read over in Court by the Register: And if the Register draw up and pass any Order contrary to the Directions of the Court, (which very rarely happens) the Chancellor, or Master of the Rolls, who made the Order, will upon Motion or Petition appoint a Day for both Sides to attend, with the Register to set it right: And if it be in the Vacation, and requires Expedition, Application may be made by Petition.

Where any subsequent Order is obtain'd, and a former Order material for the Court to take Notice of is conceal'd, or not truly and fairly represented, no Benefit shall be taken of the subsequent Order; but the Court, upon Motion, will either set aside, or alter the same, as obtained surreptiriously: And therefore the Register, in drawing up such Orders, always mentions the next precedent Order, in which great Care ought to be taken that it be fully and truly recited, lest a Mistake therein should vitiate the

Order.

t

d

ft

0

U

Č-

ty

he

After Orders are entred, they may not only be alter'd, but even discharged on good Cause, by special Direction of the Court. And when a Party moves to discharge an Order, he must have it drawn up ready to

produce to the Court.

If Counsel move in the Morning to make an Order Nisi absolute, it is commonly granted, provided Cause be not shewn before the rising of the Court; for the Party has all the Day during the Sitting of the Court, to shew Cause: And an Affidavit of duly serving

N 3 the

Minutes the Clerk in Court, or Solicitor of each Side, may take a Copy from the Regifter, in order to be informed of any Thing that is Special therein. And if in Special Cases any Difficulty or Doubt arises in the Minutes, the Parties may attend the Regifter about explaining them; and if by this Means they cannot be fettled to the Satisfaction of both Parties, the Court may be applied to, either by Motion or Petition, but usually by Petition, to explain or amend them; and the Court will order the Register, and all Parties, to attend therein; when they attend by their Counfel; and the Court then makes such Order about rectifying the Minutes as they shall see Cause.

But with Respect to Orders of Course, or fuch Orders as are not in Special Cases, there is no Occasion to take a Copy of the Mi-

nutes, &c.

If you want an Order drawn up upon a Petition, you need only go to any one of the Registers for that Purpose, and with him leave the Petition: And if the Order be obtained upon Motion, then you may leave a Brief with him, or other proper Instructions, and from those and his Minutes he draws the Order, and after you have look'd it over, and feen that it is right, you must return it to be pass'd (ie. to have his Hand or Mark to it) which being done, you must leave it with, one of the entring Registers to be entred; after which, and not before, you may regularly ferve it on the other Side; for all Orders must be pass'd and enter'd before allowed or served: And if either Party expects any Use or Benefit by an Order, it must be first drawn up, &c. The

The Register is to take down all Minutes truly; and in special Cases, and upon Hearings, they are usually, so soon as pronounced, read over in Court by the Register: And if the Register draw up and pass any Order contrary to the Directions of the Court, (which very rarely happens) the Chancellor, or Master of the Rolls, who made the Order, will upon Motion or Petition appoint a Day for both Sides to attend, with the Register to set it right: And if it be in the Vacation, and requires Expedition, Application may be made by Petition.

Where any subsequent Order is obtain'd, and a former Order material for the Court to take Notice of is conceal'd, or not truly and fairly represented, no Benefit shall be taken of the subsequent Order; but the Court, upon Motion, will either set aside, or alter the same, as obtained surreptitiously: And therefore the Register, in drawing up such Orders, always mentions the next precedent Order, in which great Care ought to be taken that it be fully and truly recited, lest a Mistake therein should vitiate the

Order.

U

it

16

After Orders are entred, they may not only be alter'd, but even discharged on good Cause, by special Direction of the Court. And when a Party moves to discharge an Order, he must have it drawn up ready to

produce to the Court.

If Counsel move in the Morning to make an Order Nisiabsolute, it is commonly granted, provided Cause be not shewn before the rising of the Court; for the Party has all the Day during the Sitting of the Court, to shew Cause: And an Affidavit of duly serving

N 3

the Order Nisi, is requisite on such Motion; and without a Motion and Affidavit such Order is not absolute, altho' no Cause be shewn, unless it be expressly so order'd: Moreover, if you move not to make such Order Nisi absolute till after the Day given to shew Cause, you must then not only produce the Affidavit of the Service of the Order, but also a Certificate from the Register, that no Cause is shewn to the contrary; and then, if upon moving no Cause is shewn, the Court makes it absolute.

By the Stat. 9 W. 3. cap. 15. a Submission to an Award may be made an Order of this

Court.

The usual Way of serving an Order, is to shew it to the Clerk in Court, or his Clerk or Agent on the other Side; and at the fame Time to deliver him a true Copy thereof, or to leave a Copy with the Clerk in Court, his Clerk or Agent, at his Seat in the Office, at the same Time shewing him the original Order duly pass'd and enter'd: But till the Order in some special Cases, i. e. a Writ of Execution of such Order, under Seal be perfonally ferved, the Party is not brought into Contempt, nor to be committed for Difobedience; though in the Case of an Order made against a Solicitor, or Officer of the Court, it hath been held to be otherwise. and the bare Service of the Order deemed to be good; because he is supposed to be present, and to know what passes in Court.

A Party may be committed for not obeying an Order personally served; as if there be an Order against a Solicitor to bring his Bill before a Master to have the same tax'd, and he resuses to bring such Bill before the

Master,

Master, then, upon the Master's Certificate that he hath not brought such Bill; and on an Affidavit that such Solicitor hath been personally served with a true Copy of such Order, the Court, on Motion, will commit such Solicitor.

And as to Disobedience to Orders, the not doing a Thing injoined is always look'd upon as a greater Contempt, than where something is ordered to be done; for the former is still

in a Man's Power, the latter not fo.

On an Order for Payment of Costs, a Subpana for fuch Costs must be served personally, and the Costs at the same Time demanded; which Costs, by the Subpana, are payable to the Plaintiff, (or Defendant, )or Bearer. And if it be an Order for Payment of other Money, a Writ of Execution of fuch Order is to be personally served; and if the Party himself to whom it is payable do not attend himself to receive it, at the same Time the Writ of Execution is served, he must execute a Letter of Attorney to the Person that serves the Writ of Execution: authorifing him to demand and receive fuch Money ordered or decreed in fuch Writ of Execution; and until the Order under Seal be ferved on the Party himself, he is not ordinarily to be committed, or profecuted, for Contempt or Disobedience thereto.

#### Orders.

An Order to make an Election.

Orasmuch as this Court was this present Day informed by Mr. --- being of the Defendant's Counsel, that the Plaintiff doth profecute the faid Defendant both at Law and in this Court for one and the same Matter, whereby the Defendant is doubly vexed; it is therefore ordered that the Plaintiff do, within eight Days after Notice to his Attorney at Law and Clerk in Court, make his Election in which Court he will proceed, and if he shall elect to proceed in this Court, then his Proceedings at Law are stayed by Injunction; but if he shall elect to proceed at Law, or in Default of fuch Election by the Time aforesaid, then the said Plaintiff's Bill is from thenceforth to stand absolutely dismissed out of this Court, with Costs to be taxed by Mr .--- one of the Masters of this Court.

Order to serve a Subpœna upon an Attorney.

PON opening of the Matter this Day, Sc. being of the Plaintiff's Counsel, and upon reading of an Affidavit whereby it appears that diligent Search and Inquiry hath been made after the Defendant, but he cannot be met withal to be personally served with a Subpana iffued out of this Court at the Plaintiff's Suit, neither can his Habita-

tion

tion or Place of Abode be discovered; it is thereupon ordered that the leaving of a Subpana with the Defendant's Attorney at Law be deemed a good Service of the said Defendant whereby to compel him to appear to and answer the Plaintiff's Bill.

#### Order to add a Defendant to a Bill.

I PON Consideration this present Day had by the Right Honourable the Master of the Rolls, upon the Plaintiff's humble Petition, for the Reasons therein contained, it is ordered that the said Plaintiff be at Liberty to insert into his Bill the Name of—with apt Words to charge him as a Defendant thereunto.

#### Order to assign a Guardian.

Court by Mr.—being of Counsel with the said Desendants the Infants, it was alledged that the said Desendants the Infants, being served with Process to appear to and answer the Plaintiff's Bill, have appeared thereto, but cannot answer the same without having a Guardian assigned them for that purpose; it is thereupon ordered that a Commission be awarded to Commissioners therein to be named, to assign a Guardian for the said Desendants the Infants, by whom they may answer and desend this Suit.

#### Order to set down a Demurrer.

This Day preferred to the Right Homourable the Lord High Chancellor of Great Britain, for the Reasons therein contained, it is ordered that the Demurrer put in by the Defendants to the Plaintiff's Bill be fer down to be argued the next Day of Demurrers after the Demurrers already appointed; but this Order is to be drawn up, and the Demurrer entred with the Register within some Days, or else the Register is to take no Notice hereof.

#### Order to over-rule a Demurrer.

THE Matter upon the Demurrer put in by the Defendant to the Plaintiff's Bill coming this Day to be heard before the Right Honourable the Lord High Chancellor of Great Britain, in the Presence of Counsel learned on both Sides, his Lordship upon Opening and Debate thereof, and Hearing what could be alledged on either Side, doth order that the Defendant do answer the Plaintiff's Bill, and that the Demurrer do stand over-ruled.

Order to dissolve an Injunction unless Cause.

Whereas the Plaintiff obtained an Injunction for Stay of the Defendant's Proceedings at Law, for the Matters here in Question, until the Defendant should directly rectly answer the Plaintiff's Bill, and this Court take other Order to the contrary; now upon opening of the Matter this Day unto this Court by Mr.—being of the Defendant's Counsel, it was alledged that the Defendant hath since put in a full and perfect Answer to the Plaintiff's Bill, and thereby denied the whole Equity thereof: it was therefore prayed, that the said Injunction do stand absolutely dissolved, which is ordered accordingly, unless the Plaintiff's Clerk in Court having Notice hereof shall on—next shew unto this Court good Cause to the contrary.

Order to examine the Regularity of an Attachment, &c.

TPO N opening the Matter this Day unto this Court by Mr.—being of the Defendant's Counsel, it was alledged that the Plaintiff hath irregularly sued forth an Attachment and arrested the Defendant thereon before the Time for answering was elapsed; whereupon it is ordered that Mr.—one of the Masters of this Court do examine and certify whether the Attachment did duly and regularly issue or not, and in the mean Time all Proceedings on the Bail-Bond are stayed.

Order to examine into the Irregularity of returning a Proclamation.

U PON the humble Petition of the faid Defendant this Day preferr'd to the Right Honourable the Master of the Rolls, shewing shewing that the Plaintiff contrary to the Rules and Practice of this Court hath sued out Process of Contempt against the Defendant to a Proclamation, which the Plaintiff hath procured to be returned without endeavouring to arrest the Defendant on the first or other of the said Process; whereupon it is ordered that it be referred to the two senior Six Clerks not towards this Cause, to examine and certify touching the said Irregularity; and in the mean Time all further Proceedings on the Contempts are stayed.

An Order for the Six Clerks to certify the due taking of the Defendant's Plea, Answer and Demurrer.

Court by Mr.—being of the Plaintiff's Counfel, it is ordered that the two senior Six Clerks, not towards this Cause, do examine and certify whether the Defendant's Answer, Plea or Demurrer be duly and regularly taken and returned or not, and whether the Commission for taking the same duly issued.

#### Order for a Habeas Corpus.

Porasmuch as this Court was this present Day informed by Mr.—being of the Plaintiff's Counsel, that the Desendant being served with Process to appear to and answer the Plaintiff's Bill, doth resuse so to do, but sits in Contempt to an Attachment for want thereof, on which he hath been arrested, and is now a Prisoner in the Fleet Prison;

Prison; it is thereupon ordered that a Habeas Corpus be directed to the Warden of the Fleet at the Return thereof, to bring the Body of the said Defendant to the Bar of this Court to answer his said Contempt; whereupon such further Order shall be made as shall be just.

n

0

1

-

1-

e

d

0

n

1;

#### Order to refer a second Answer.

UPON opening of the Matter this Day unto this Court by Mr.—being of the Plaintiff's Counsel, it was alledged that the Plaintiff having taken Exceptions to the Insufficiency of the Desendant's first Answer, the Desendant hath put in a second Answer, which the Plaintiff is advised is also insufficient; it is thereupon ordered that it be referred to Mr.—one of the Masters of this Court to look into the said Bill, Answers and Exceptions, and examine and certify whether the said Desendant's Answers be sufficient in the Points excepted unto or not.

Order for a Commission to examine de bene esse, and to refer Exceptions.

Forasmuch as this Court was this present Day informed by Mr.—being of the Plaintiff's Counsel, that the Plaintiff long since exhibited his Bill into this Court against the Defendant, whereunto the Defendant hath put in insufficient Answers, and hath thereby delayed the Plaintiff's Proceedings to issue in this Cause, by which Means the Plaintiff is like to lose the Testimony of a very material Witness, he being a great Dealer at Sea,

and now ready to go a Voyage beyond Sea; it was therefore prayed that the Plaintiff may take out a Commission to examine his Witnesses de bene esse to preserve their Testimonies, and the Desendant may join in the same if he pleases; which is ordered accordingly; and it is further ordered, that the Bill, Answers and Exceptions be referred to one of the Masters of this Court to consider of the same.

#### Order to renew a Commission.

PON opening of the Matter this Day unto this Court by Mr .- being of the Defendant's Counsel, and upon reading of an Affidavit whereby it appeared that the Defendant could not procure A. B. and C.D. his Commissioners to be present at the Execution of the faid Commission, which was executed the last Vacation in this Cause; and forasmuch as the faid Defendant hath many material Witnesses to examine in this Cause, as namely E. R. and G. H. which he could not procure to be examined by the faid Commiffion; it was therefore prayed that the faid Defendant might renew the faid Commission returnable , which this Court held reasonable, and doth order the fame accordingly.

Order to stay Proceedings on Exceptions to a Report.

a

a

81

I

Court by Mr.—being of the Defendants Counsel, it was alledged that the Defendants have filed Exceptions to the Report made in this Cause by Mr.—one of the Masters of this Court, bearing Date the

Register according to the Rule of this Court, as by the Register's Certificate appears; it is thereupon ordered that all Proceedings upon the faid Report be stayed until the Matter upon the said Exceptions shall be heard and determined by this Court.

Order to confirm a Report unless Cause.

Gent Day by Mr.——being of the Plaintiff's Counsel, and upon producing of a Report made in this Cause by Mr.——one of the Masters of this Court, bearing Date the—Day of——Instant, it is ordered that the said Report, and all the Matters and Things thereincontain'd, do stand ratisfied and confirm'd by the Order, Authority and Decree of this Court, to be observed and performed by all Parties thereto, according to the Tenor and true Meaning thereof, unless the said Desendant, having Notice hereof, shall within eight Days after such Notice shew unto this Court good Cause to the contrary.

Order for a Superfedeas upon an Arrest.

Day by his Honour the Master of the Rolls, upon the Desendant's humble Petition, and of the Master's Report therein mentioned, whereby it appears above 500 h is reported due to the Desendant, and that the Desendant came up to Town only to desend and prosecute Exceptions taken to that and another Report, whereof one of them is referred to a Trial at Law, and that during the Desendant came up to Town only to desend another Report, whereof one of them is referred to a Trial at Law, and that during the

Defendant's Attendance here on that Occafion he is arrested at the Plaintiff's Suit, as by Affidavit annexed appears, contrary to the Privilege that Suitors ought to have in going, attending, and returning; his Honour doth thereupon order, that a Supersedeas do issue to the Sheriff of Middlesex to discharge the said Desendant of the said Arrest, he being only arrested on Mesne Process.

Order to dismiss a Bill for want of a Replication.

Porasmuch as this Court was this present Day informed by Mr.—being of the Defendant's Counsel, that the Plaintiff exhibited his Bill into this Court against the said Defendant in Michaelmas Term last, to which the Defendant answered the same Term, since which Time the said Plaintiff hath not surther proceeded in this Cause, as by Certificate now read appeared; it is thereupon ordered that the said Plaintiff's Bill do stand dismissed out of this Court with Costs; and it is hereby referred to Mr.—one of the Masters of this Court to tax the said Costs.

Cofv

u

w

fel

no

bei

Ser

do

hin

the

Order Nisi for a Subpœna duces tecum.

Court by Mr.—being of the Plaintiff's Counfel, it is ordered that a Subpana duces tecum be awarded against the said Defendant to bring into this Court certain Deeds and Writings by him confessed in his Answer to be in his Custody, or at the Return thereof to shew Cause to the contrary.

Order

#### Order for a Subpœna duces tecum.

Porasmuch as this Court was this present Day informed by Mr.—being of the Plaintiff's Counsel, that the Desendant having by his Answer to the Plaintiff's Bill confessed the having in his Custody a Feosfment or other Writing of the Lands in Question, conveyed from A.B. to C. D. wherein the Plaintiff claimeth Title; it was therefore prayed that a Subpana duces tecum may be awarded against the said Desendant to bring the said Writings into Court, which is ordered accordingly.

#### Order for a Serjeant at Arms.

7 Hereas the faid Defendant hath fit out all Process of Contempt to a Commission of Rebellion, for Want of his Anfwer to the Plaintiff's Bill, as by the fame under the Seal of this Court, and the Commissioners Certificate thereupon indorsed, whereby the faid Commissioners do certify that the faid Defendant doth abscond himfelf fo that he cannot be taken thereupon, now produced appears; it is therefore ordered, upon the Motion of Mr .being of the Plaintiff's Counsel, that the Serjeant at Arms attending this Court, do apprehend the faid Defendant, and bring him to the Bar of this Court, to answer the faid Contempt.

#### Order to examine viva voce.

Court by Mr.—being of the Plaintiff's Counsel, it is ordered that the Plaintiff be at Liberty to examine one or more Witnesses viva voce, at the Hearing of this Cause, to prove the Execution of a certain Deed or Writing bearing Date the—Day of—1736. made between A. B. of the one Part and C. D of the other Part, and also a Bond from E. F. to G. H. bearing Date the—Day of—1732, in the Penalty of 1001. for Payment of 501. and Interest to the said G. H. saving to the Defendant all just Exceptions.

#### Order for a Subpœna Scire Facias.

Mr.—of the Plaintiff's Counsel, it was alledged that the Plaintiff having obtained a Decree against the Desendant, he died before the Performance thereof, leaving C. D. Esq; his Brother and Heir; wherefore it was prayed that a Subpana in Nature of a Scire Facias might be awarded against the said C. D. to shew Cause at the Return thereof why the said Decree should not stand revived against him, and be of the same Force and Effect as the same was at the Time of the Decease of the said C. D. which is ordered accordingly.

CO

T

Order to stay Proceedings on a Decree, upon filing a Bill of Review.

U FON opening, &c. it was alledged that the faid Plaintiff hath filed a Bill of Review against the faid Defendant, and alfo given Security by Recognizance to abide fuch Order as the Court shall make upon hearing this Cause upon the faid Bill of Review, according to the Course of the Court, as by Certificate appears, and yet the faid Defendant doth profecute the Plaintiff with Process of Contempt for not performing the former Decree made in this Cause; it-was therefore prayed that the Plaintiff's Bill of Review may be admitted, and that all Proceedings on the faid Decree may be stayed till the Matter of the faid Bill of Review be heard and determined by this Court; which is ordered accordingly.

Order to stand committed for not performing a Decree.

LIPON the Plaintiff's humble Petition this Day preferred to the Right Honourable the Lord High Chancellor of Great Britain, it was alledged that the Plaintiff in — Term—obtained the Decree of this Court against the Defendant, for vacating a Recognizance, amongst other Things therein contained, and that the said Defendant hath stood out all Process of Contempt to a Commission of Rebellion, which hath been several Times renewed against him, he absconding,

e

'n

d

16

er

that he could not be taken till now of late: and thereupon the faid Defendant entered his Appearance with the Register of this Court, and hath fince been examined upon the Contempt; and the faid Examination having been referred to Mr -one of the Mafters of this Court, the faid Master hath certified the faid Defendant is guilty of the faid Contempt; and forafmuch as the faid Plaintiff hath not had any Benefit of the faid Decree, but hath been at great Charges in profecuting the faid Defendant, and endeavouring to compel him to yield Obedience thereunto, which he hath obstinately refufed to do, to the great Damage of the faid Plaintiff; it was therefore prayed that the Defendant might stand committed unto the Prison of the Fleet until he shall perform the faid Decree; which his Lordship held reafonable, and doth order the same accordingly.

An Order for an Injunction to put and quiet the Plaintiff in Possession, according to a Decree.

Day unto this Court by Mr.—being of the Plaintiff's Counfel, it was alledged, that by a Decree of this Court, bearing Date the—Day of—1739, as also by a former Decree of the—Day of—1736, the Defendant is to execute a Conveyance of a certain Tenement and Farm in—the County of—to hold to the Plaintiff and his Heirs, after the Death of—and—his Wife both fince deceased, which the Plaintiff

Plaintiff and his Heirs are to have and enjoy accordingly, and that the Defendant do deliver up the Writings touching the Premiffes to the Plaintiff upon Oath; and that the Defendant hath been duly ferved with the faid Decree, and Conveyances directed to be fettled by Mr .--- one of the Masters of this Court, have been tendered to him to execute, which he refuses to do, as by Affidavit now produced appeared, and is in Contempt for Breach of the faid Decree; it was therefore prayed that an Injunction may be awarded to put and quiet the Plaintiff and his Affigns in the Poffession of the said Premisses, according to the said Decree; which is ordered accordingly.

#### Touching the paying and receiving Money in this Court.

A L L Sums of Money, &c. decreed to he paid into this Court, must, by the late Act 12 Geo. 1. be paid into the Bank, with the Privity of the Accountant General of this Court, and placed to the Credit of the Cause.

t

C

-

a

be

he

n-

And note, that any of the Parties may apply to the Court, that fuch Sums, &c. may be placed out on Government Securities, &c. for the Benefit of the Parties interested in the Cause.

And when any of the Parties, or other Persons, want to have their Money which is reported due to them; you must first give Notice to all the Parties, that you intend to move the Court, and

upon

upon producing a Certificate from the Accountant General, and the Master's Report,

the Court will order it.

Then you carry this Order and the Report to the Accountant General's Office, who will thereupon give you a Cheque Note upon the Bank, which you must get entered in the Report Office, and then, upon carrying the Order and Report to any of the Registers, they will sign the Note gratis; and after that you have nothing more to do than to go to the Bank

and receive the Money.

Note; None but Parties, or their legal Representatives, can obtain this Note, for Representatives must make it appear that they are such, by producing the Administration and the like; yet if the Person to whom the Money is reported due, does not appear himself, then he must execute a Letter of Attorney, authorising such Person as he shall think proper, to receive the Money, &c. And upon an Affidavit of the due Execution thereof thereto annexed, and upon carrying and leaving the Letter of Attorney and Affidavit, the Accountant General will give such Note to the Attorney thereby appointed.

By an Order dated 2. July 1739. reciting the Act passed 12 Geo. 2. "Intitled an Act to impower the High Court of Chancery

" to lay out, upon proper Securities, any "Monies not exceeding a Sum therein li-"mited, out of the Common and General

"Cash in the Bank of England, belonging

to the Suitors of the faid Court, for the Ease of the faid Suitors by applying the

66 Interest arising therefrom, for answering

4 the

ir

C

d

" the Charges of the Office of the Account-" ant General of the faid Court," It is enacted that out of the Money that lies dead in the Bank, belonging to the Suitors of this Court, a Sum not exceeding 350001. should, by Virtue of any Order of this Court, be placed out in one intire Sum for the Purposes thereafter mentioned. Whereupen it is ordered, that out of the Cash in the Bank belonging to the Suitors of this Court, 35000 l. be placed out with the Privity of the Accountant General in the Purchase of 3 per Cent. Annuities Anno 1731. in Truft for the Suitors of this Court subject to the further Order of the Court. And out of fuch Interest the Bank is from Time to Time, without any Draught, to pay, by quarterly Payments, the Annual Sum of 10201. in Manner following, that is to fay, To Mark Thurfton, Eig; Accountant General of this Court, 6501. To Mr. John Waple, his first Clerk, 2501. and to Mr. Henry Nowell his fecond Clerk, 1201. till the further Order of the Court, which Salaries are to be in Lieu of, and in Recompence and Satisfaction for all Fees which shall be payable to the Accountant General's Office by the Suitors of this Court. And it is further ordered, that from the twenty-ninth of September then next no Fee or Fees whatsoever be taken at the Accountant General's Office, or by any Officer or Clerk belonging thereunto, for any Matter or Thing directed to be done by the Act 12 Geo. 1.

I

.

it

1-

le

Ç-

0

y

y i-

al

ıg

ne

10

ng ne And by an Order 1. Angust 1741. touching Inconveniencies that may arise in receiving from the Exchequer the Annuities due, and which shall grow due on Exche-

0 4

quei

quer Orders and Tallies for want of having the same entred at the Exchequer, and proper Indorsements made thereon, that the Annuities of such Orders are to be paid to the Cashiers of the Bank of England for the Use of the Suitors, It is ordered, that the Bank of England do, by their proper Officer or Officers, fend to the Exchequer all fuch Exchequer Orders belonging to the Suitors of this Court, and then in the Bank, to the Intent that the proper Officer or Officers of the Exchegaer may make Entries in the Books kept there, and Indorfements on the faid Orders, that the Annuities due and which shall grow due thereon, respectively are to be paid to one of the Cashiers of the Bank of England for the Time being, to be placed to the Credit of the respective Causes to which the said Orders do belong, and to no other Person or Persons whatsoever without the further Order of this Court; and that the like Entries and Indorsements be made on all fuch Exchequer Orders, as shall hereafter be delivered into the Bank on Account of any of the Suitors of this Court, by Virtue or in Consequence of any Decree or Order of this Court.

A visa fed, to tosia la viena en kara muee de

on ortaless, manmow therefore takens, and adm. Admer and his general to be a grant for the first and his angless in the angles in the

## Of Injunctions.

A N Injunction is a Writ remedial in Nature of a Probibition; and it may be granted either to stay Proceedings at Law, or to stay Waste or Damage to the Freehold or Inheritance of another, by felling Timber, &c. Or it may be to yield up, quiet, or continue the Possession of Lands, &c. But this last Sort of Injunction is a judicial Writ, and subsequent to a Decree, being in Nature of a Writ of Execution, or Habere facias possessionem: But sometimes, in ordinary Cases, Injunctions are granted to quiet Possession before Hearing, to the Party having the same.

If a Person is sued at Law for irregularly ferving the Process of this Court, an Injunction will be granted to stay the Proceedings; for the Irregularity is only punish-

able in this Court. 1 Vern. 269.

1

n

n

1-

ors

.6

An Injunction is never to be granted before a Bill is filed. 4 Inft. 92. S. P. 1 Vern. 156. Where it is said, that the Defendant cannot have an Injunction, because he has no Bill filed. But where a Mortgagee brought his Bill to fore-close, and pending the Suit, an Advowson appendant to the mortgaged Manor became void; and the Mortgagee being hindred from presenting, brought his Quare Impedit; and the Court granted an Injunction on the Defendant's Application, tho' he had no Bill filed. 2 Vern. 401. So where a Cause abated by the Death of the Lady Gerrard, and the Defendant was her Executor, who being ferved with a Copy of the

the Bill of Revivor, and my Lord Keeper's Letter, would not appear, being in Privilege; and upon Motion an Injunction was granted, tho' the Caufe was not revived: And the Case of Armstrong and Fackson was cited, where, before a Demurrer determined, the Plaintiff had an Injunction, on Motion, Trin. 1700. Duke of Hamilton and the Earl of Macclesfield. So where the Lord Wharton had an Injunction to quiet him in the Poffession of the Mines in Question; and upon hearing of the Cause an Issue was directed to try whether the Mines in Question were within the Piaintiff's or Defendant's Manor: the Issue was tried at Bar, and found for the Plaintiff; then the Plaintiff died, and a Bill of Revivor was brought, and before the Time for answering was out, or the Cause revived, the Plaintiffs moved for an Injunction to ftay the Lord Wharton's Working the Mines, having Affidavits, that fince the Verdict against him he had trebled the Number of Workmen, and between that and Candlemas would work out the Mines; and an Injunction was granted, tho' the Caufe was not revived. Mich. 1702. Robinson and Lord Wharton.

Where the Defendant was in Possession at the Time of exhibiting the Bill, and the Plaintiff afterwards enter'd, an Injunction was granted against the Plaintiff to avoid the Possession. And in another like Case, the Defendant prayed he might have an Injunction, or that the Bill might be dismiss'd; and the Court held it reasonable that he should have one or the other. Cary's Reports 51, 63, 140.

C

for V

C

in

If a Man prays an Injunction to ftay Proceedings at Law upon a Bond, he shall not have have it; except he will give Judgment, and be bound by Order to bring no Writ of Error. 1 Vern. 120.

When an Injunction is granted to stay Proceedings, 'tis usually upon the Plaintiff's suggesting some rigorous Proceedings at Law, begun or threatned by the Defendant: And if the Cause be at Issue, or a Declaration delivered, it commonly gives Leave to go to Trial, &c. but stays Execution till farther Order of the Court. And in some Casses, where the Matter at Law is tried, it bars usually from Execution, but not from Judgment: Also sometimes where a Judgment is executed, it will stay the Money in the Sheriff's Hands.

As to Injunctions to stay Waste, they are commonly granted to one in Reversion or Remainder against Tenant for Life, or other particular Tenant, where Waste is begun to be done, or where there is reasonable Grounds to fear it: And though a Bill is exhibited, yet generally an Affidavit must be made how the Party derives his Title to the Estate in Question, and that some Waste or Spoil is done or threatened; but sometimes, tho' but very rarely, the Court will grant it without an Affidavit.

An Injunction is commonly obtained by Order upon Motion, either upon Matter confess'd in the Defendant's Answer, or upon some Matter of Record, or on some Deed, Writing, or other Evidence produced in Court, whereby it appears there is a Probability that the Party ought to be discharged in this Court from such Suit: But an Injunction after the Defendant has answered, is never obtain'd without giving two Days Notice

Notice in Writing to the Defendant's Clerk in Court, of such Motion, to the End the Defendant may by his Counsel defend the same, if he thinks sit. It may also be obtained upon an Attachment, or upon a Dedimus, or upon a Dedimus, or upon a Defendant's praying Time to answer; or where a Debt is stale, and the Defendant hath slept long; or where the Creditor and Debtor have been dead long before the Suit; or where the Defendant cannot be found to be served with a Subpana: But in all Cases where an Answer is put in, you ought to give Notice as before.

All Injunctions are commonly granted, and dissolved, upon Motion: But in the long Vacation, when the Court don't sit, and no Motion can be had, a Bill being siled, and the Defendant cutting down Trees, or committing Waste, which he has no Right to do, upon an Affidavit of the Fact, the Lord Chancellor, in that Case, will, upon a Petition, grant an Injunction to stay the Defendant from cutting down Trees, or com-

mitting Wafte.

If the Defendant doth not appear in Time, then you may draw and ingross an Affidavit of serving the Subpana, and let it be sworn and filed; upon which you get an Attachment issued for want of an Appearance; and then you give Instructions to Counsel to move thereon for an Injunction, which is granted of course: But these Injunctions generally give the Desendant Liberty to call for a Plea; and proceed to Trial, and for want of Plea to enter up Judgment; but Execution is thereby stayed: But when the Desendant is served with such Injunction, and he has not arrested the Plaintiss, nor service.

f

B

0

tl

I

li

N

N

led his Declaration, he cannot, after served with such Injunction, arrest the Plaintiff, nor file a Declaration; if he does he is guilty of the Breach of such Injunction; and the Court will commit him for Breach thereof, in the same Manner as if there had been no such Clause in such Injunction.

But if the Defendant appears in Time, and does not answer in Time, then on an Attachment for want of an Answer, or upon the Defendant's craving a Dedimus to answer in the Country, or a Defendant getting Time to answer, an Injunction will be granted in like Manner; which is generally until Answer and other Order: And such Injunctions have generally the like Clause, as before, of giving the Defendant Liberty to call for a Plea, &c.

But after Appearance and Answer in Time, the Court must be applied to for an Injunction on the Merits; in which Case you must draw a Brief of the Pleadings for Counsel, and give a Notice of Motion in Writing for such Injunction to the Defen-

dant's Clerk in Court.

.

d

It

-

ıt

0

1e

t.

0,

d

e-

n-

e,

rit

n

b-

nd

to

is

e-

all

or

ut

he

n,

fi-

led

An Injunction upon an Attachment, Dedimus, or upon the Defendant's praying Time to answer, does not extend to stay Proceedings in the Spiritual Court, without

special Order. 1 P. Williams 301.

If the Bill is to stay Waste, or Suits at Law, you may have a Subpana before the Bill is filed. 4&5 Ann. c. 16. But the Bill ought to be filed by or before the Return of the Subpana; and after 'tis filed, and the Defendant hath appeared, you may, on filing Affidavits of Waste, &c. and Notice of Motion, apply for an Injunction on the Merits.

If an Injunction is obtained on an Attachment for want of an Appearance, or Answer, then observe to put in a sufficient Answer; and pay or tender the Costs of the Attachment to the Plaintiff's Clerk in Court, which is ten Shillings; and fo foon as the Answer is filed, give Instructions to Counsel to move to diffolve the Injunction Nifi, and draw up and enter your Order thereon, and ferve it upon the Plaintiff's Clerk in Court. And if on the Day to shew Cause no Cause be shewn, the Injunction will be dissolved of courfe, on Motion of the Defendant's Counfel, and producing an Affidavit filed of the Service of fuch Order Nis: But if Cause is fhewn on the Merits, the Injunction is sometimes continued till the Hearing. And if the Plaintiff has filed Exceptions to the Anfwer, and shews them for Cause, then he is fometimes ordered to procure the Master's Report in a Week, but usually in four Days; or in Default thereof the Injunction to ftand dissolved, without further Motion. the Master shall report the Defendant's Answer insufficient, the Injunction will be continued till he answers the Exceptions.

An Injunction upon a Dedimus is on Motion granted of Course, 'till coming in of the Answer and other Order. And it is also a Motion of Course to dissolve an Injunction upon coming in of the Answer,

unless Cause.

After the Answer is come in, if the Defendant's Counsel alledge that he has answered, and denied the whole Equity of the Bill, (his Contempts, if any, being clear'd) the Court upon such Allegation, will order the Injunction to stand dissolved Nisi, at a short

fhort Day; and if at the Day no Caufe be shewn, then, upon Motion, and Affidavit of ferving the Order, it will be made abfolute: But if the Contempts be not clear'd (that is, the Costs not paid) or if the Anfwer be not filed, and all Equity denied; or if the Exceptions are put in, and the Answer reported insufficient, any of these are good Causes against dissolving the Injunction: But if there be two Defendants, against whom an Injunction is obtained, the Court will feldom dissolve the Injunction 'till both have answered. Also where the Plaintiff has Equity on his Side, or his Case feems hard, the Court will not eafily diffolve the Injunction; nor will they commonly diffolve it the last Seal after Term; nor is it ever dissolved but upon Motion of the adverse Party.

Where an Injunction shall be continued till fome of the Defendants put in their Answer, by reason that those Defendants that live in Ireland, have been served with Process, and have not put in their Answer, and that Bail is given in the Action. Vide Bobeme and Porter, Barnardiston's Reports

354.

Where an Injunction shall not be continued till the Hearing, but only till the Answers of some of the Defendants come

in, when they live in Ireland. Ibid.

If a Defendant shews that he has an Estate without Impeachment of Waste, it is ordinarily good Cause to prevent or dissolve the Injunction, where such Injunction is granted for staying of Waste only.

An Injunction granted upon the Merits, or on some special Cause of Equity, com-

monly

monly stands till the Hearing, unless the Plaintiffdelay his Suit. Unreasonable Delay is a good Cause for dissolving an Injunction for staying Proceedings at Law; and yet the Court will sometimes, upon Motion, revive it, altho' dissolved, especially where Equity appears evidently with the Plaintiff, or his Case is hard.

When a Plea or Demurrer is argued by Counsel, and allowed, there is generally, tho' not always, an End of the Injunction; for some Equity may be shewn for continuing it, arising out of the Desendant's Answer, put in with such Plea or Demurrer: And upon a Plea or Demurrer being allowed, or on coming in of the Answer, the Court will not absolutely dissolve the Injunction on the first Motion, though upon Assidavit of Notice, but only Nisi; thereby giving the Plaintiss Liberty to shew Cause against dissolving the Injunction.

li

2 .

Li

Te

be 1

Te

2 (

ftra

exp

Gr

Ter he

befo

Caf

After Answer and Demurrer the Plaintiff amended his Bill, and had an Injuncti-

on, &c. Vide Gilb. 183.

An Injunction has been refused whilst a Plea or Demurrer was Depending; for until it be argued, it appears not whether the Court has Cognizance of the Cause.

Exceptions to an Answer, without a Report of its Insufficiency, are not a sufficient Cause for obtaining an Injunction; because they are often put in for Delay. Yet an Injunction may be continued on Exceptions; and the Court has refused to dissolve the Injunction even where the Exceptions came in only the Night before, and sometimes in the Morning before, the Motion. If a Report upon Exceptions be not procured.

red in a reasonable Time, of if the Answer be reported sufficient, &c. Upon Motion the Injunction will be dissolved

Nifi, and fometimes absolutely.

If there be a Leffee for Life, the Reverfion or Remainder in Fee; and (a) the Leffee in Poffession (b) wastes the Lands; tho' Tenant by the he is (c) not punishable for waste by the Curtesy was Common Law, yet he shall be restrained in injoined from this Court, for this is a particular Mischief, waste. Hard. and though he is not punishable during the of. So of a Continuance of the Remainder, yet (d) after Jointress. its Determination he is. I Rol. Abr. 337. Toth. 144. S. P. Moor 554. Toth. 61. Car. 26, 36. Woods and 1 Vern. 23. Co. Lit. 54. 2 Inft. 301. 5 Rep. Houses re-76.

(a) Note; (b) Waste in strained. Toth. 83. So in fel.

ling Timber. 1 Chan. Rep. So in plowing antient Pasture. Toth. 143. 144. So of antient Meadow and Pasture. 1 Chan. Rep. 14, 106, 116.

2 Chan. Rep. 94.

(c) Waste done by one who held by Covenant, and therefore not punishable by Law, yet holpen in Equity. Toth. 188. But here observe a Difference, where the Tenant is dispunishable of Waste by the Nature of his Estate, or by express Grant; and also a Difference as to the Kind of Waste; for it appears from this Case, that the first Tenant for Life shall be restrained generally, which includes all kind of Waste. But Tenant with express Grant of without Impeachment of Waste, shall not be restrained from cutting Timber, 1 Chan. Rep. 242. or from plowing, 1 Vern. 23. or from opening new Mines. 1 Salk. 161. But fuch a Tenant shall be restrained from pulling down Houses, or defacing a Seat. 2 Chan. Ca. 32. 1 Salk. 161. So that all Tenants for Life shall be restrained from pulling down Houses, or defacing Seats. But Tenant by express Grant of without Impeachment of Waste, may cut down Timber, or open new Mines, &c. though Tenant for Life, without fuch express Grant shall not.

(d) From this Reason here given, it should seem, that except the Tenant in Possession be punishable by Law at some future Time, tho he is not so at present, Equity will not injoin him. But from the Cases before it appears that tho' he be intirely dispunishable, he shall be in some

Cases restrained.

e

t

n

1-

16

ns

0 n.

-

ed

An Injunction may be granted to fray Waste, in Behalf of an Infant in Ventre fa

Mere: For possibly fuch Person may be very greatly prejudiced by the Cutting down of Timber or the committing of Waste. And where the Person so cutting down Timber or committing Waste does not appear to have an absolute Right so to do, the Court very often interposes, and prevents and hinders that Person by Injunction from cutting down Timber or committing Waste. But in all Cases whatsoever where the Court sees Reafon either for restraining of Waste or cutting down Timber, or other Trees, or proceeding in Actions at Law, they will grant Injunctions. And where an Injunction is granted to stay an Action at Law until the Hearing, the Court upon Hearing the Cause may either dissolve the Injunction, or, if they see Cause, order that it be made perpetual. A Court of Equity hath Jurisdiction to quiet Men in their Possessions; per Coke. 3 Bulf. 34. S.C. Litt. Rep. 166. 1 Roll. Rep. 190. As where the Party hath been in Possession three Years, and another diffurbs him in fuch Possession; this Court will grant an Injunction to quiet him in it. Toth. 37. Car. 66. S.P. Vern. 156. So the Law Patentees had an Injunction to restrain the Desendants from proceeding in the Printing of any Law Books. 2 Chan. Ca. 67. So the Company of Stationers had an Injunction, to stay the Books in the Cuftom-House, and hinder the Sale of Statute Books printed beyond Sea. 2 Chan. Ca. 76. And where the Case requires it, the Court will grant a perpetual Injunction; as this Court granted a perpetual Injunction against proving a Will in the Spiritual Court, it being found upon a Trial at Law to be no Will. I Chan. Ca. 80. So a perpetual Injunation

u

0

L

l

R

T

ar

tu

to

th

in

fti

nie

m

ction ws granted to stay the Action at Law of several Persons, where the Right had been tried and determined by one Trial. Vide Vern. 266.

An Injunction to prevent the pulling down a Castle granted against Tenant for

Life, dispunishable of Waste.

1

.

n

S.

1-

n

2-

a.

10

as

nc

rt,

00

n-

on

Lord Bernard upon his Marriage in Confideration of a Portion of 10000 l. settled the Castle of Raby, &c. to the Use of himself for Life, without Impeachment of Waste, Remainder to his Son for Life, &c. The Son brought a Bill against his Father the Lord Bernard, to injoin him from pulling down the Castle; and Cowper Lord Chancellor granted an Injunction, because this was an Abuse of the Power and derogatory to the Grant; the Intent of that Privilege being only in Order to cut down Timber and open new Mines. Vane v. Lord Bernard, 1 Salk. 161.

The Court will not grant an Injunction unless a Right appears. 1 Vern. 276. As upon a Motion for an Injunction to stop the Sale of English Bibles printed beyond Sea; the Lord Keeper declared, he could not grant an Injunction, but where a Man has a plain Right to be quieted in it; and directed Trial, wherein the Patentees to be Plaintiffs, and the Defendants to admit they have fold twelve Bibles; and when the Trial is over to come back again. 1 Vern. 120. So where the University of Oxford had a Patent for printing of Bibles, the King's Printers, being intitled under a Patent, brought a Bill to restrain them; though the Court was of Opinion, that the University could not print more than for their own Use; yet it being

P 2

a Right

a Right determinable at Law, would not grant an Injunction, but directed a Trial, Vern. 275. And where the East-India Company prayed an Injunction to restrain the Defendant from Trading to the East Indies, tho' the Court was far from thinking the Company's Patent void, which had been confirmed by so many Kings; yet the Validity of the Patent being triable at Law, an Injunction could not be granted, till it was determin'd there, and a Trial was directed. Vern. 127, S. C. 2 Chan. Ca. 165.

But this Sort of Injunction for Possession, before Hearing, 'tis said, hinders not the Defendant's Suit at Law, making a Lease, taking a Distress, &c. and it may be dissolved on Cause shewn, as Injunctions in

I

t

2

jı

th

TC

hi

ar

m

pr

u

an

In

C

tic

th

other Cases.

Sometimes, pending the Suit, the Court will order a Party Possession by Injunction; or that the Rents not already paid shall be staid in the Tenant's Hands 'till Hearing, and sometimes will order both; at other Times will order a Receiver, (who upon giving good Security) shall take the Rents and Prosits, and pay them into Court, or account for them, when the Court shall require; and he to enter into such Recognizance as the Court directs, to secure his accounting for and paying such Rents into Court.

And on a Bill taken pro Confesso, by Reafon of the Defendant's Contempt in standing out all Process, if it prays an Injunction to quiet Possession, or to stay Proceedings at Law, the Court will decree a perpetual one.

An Injunction is ferved by shewing it under Seal, and delivering a true Copy thereof to the Party; and the Service must be personally on the Party himself, his Attorney, and Solicitor, &c. or such of them as can be found, or as the Case may require: But it has been held, that leaving it with the Attorney's or Solicitor's Clerk or Servant, is good Service.

And if the Injunction be shewn, and a Copy delivered, the Party serving it is not bound to deliver the Injunction itself to be compared. 2 Chan. Ca. 203. Woodward and

King.

t

e

.

d

C-

e-

1-

C-

to

a-

ng

to

at

ne.

n-

re-

of

Injunction for want of an Answer discharged, because the Plaintiff had kept it several Months, and not served it till after the Answer came in. Morise and The Bank of

England, Select Cafes in Chan. 43.

If the Party or his Attorney proceed at Law, after Service of an Injunction to flay Proceedings, on Affidavit fworn and filed of the Service thereof, an Attachment iffues against the Party for Breach of the said Injunction: And if he be arrested on the said Attachment, and enters his Appearance with the Register on the faid Attachment, Interrogatories are to be filed and exhibited against him, to which he must answer upon Oath; and if he denies the Service, the other Party may examine one or more Witnesses to prove the Service, which if it be proved upon him, the Court will commit him to the Fleet Prison; and make him pay all Costs and Charges before he be discharged.

But the Modern and usual way, where an Injunction is serv'd, and the Party is in Contempt for Breach thereof, is to give Notice of Motion to the adverse Clerk in Court, that the Party may be committed to the

P 3

Fleet Prison for Breach of the said Injunction: And having made an Affidavit of the Service of the faid Injunction, your Counfel moves it; and if the other Side are not prepared to defend fuch Motion, the Court usually gives them a Day to shew Cause against such Motion; and then upon hearing the Affidavits on both Sides, the Court decides whether the Party is guilty of the Breach of the Injunction or not; and if he be, makes an Order for his Commitment to the Fleet Prison, from whence he cannot be discharged until he has paid the adverse Party his Costs, and sometimes until he has made Restitution to him for the Damages he may have fustained for Breach of the said Injunction.

And tho' an Injunction be irregularly obtained it ought to be obeyed, or the Party is in Contempt. Vide 2 Chan. Ca. 203.

in

ai

m

in

CL

in

or

th

D

th

th

an

Wa

Ex

But if an Injunction be irregularly obtained, the Party's Counsel may by a Motion of Course move to refer the Irregularity of the issuing out the said Injunction to a Master of the Court, which if the Master reports to be irregularly iffued, the other Side may take Exceptions to fuch Report, and file them with the Register, and deposite five Pounds with him; which Exceptions are argued in Court: But if no Exceptions are filed, the Court upon the Master's Report will dissolve that Injunction, and sometimes commit the Clerk in Court to the Fleet for making out that Injunction, and make him pay all the Costs, and sometimes the Damages the other Side may have fustained for irregularly making out fuch Injunction. An

An Order for an Injunction on a Dedimus.

Master of the Rolls.

e

It

10

7

111

Thursday the——Day
of——in the——
Year of the Reign of his
Majesty King George the
Second, and in the Year
of our Lord——Between A.B. and C.D. Complainants, and E. F. Defendant.

Orasmuch as this Court was this present Day informed by Mr. --- being of the Plaintiff's Counsel, that the Defendant being served with Process to appear to and answer the Plaintiff's Bill, hath appeared accordingly, but for Delay hath craved a Commission to answer in the Country; and yet in the mean Time the faid Defendant profecutes the Plaintiffs at Law for the Matters in the Bill complained of: It is thereupon ordered that an Injunction be awarded against the Defendant for Stay of his Proceedings at Law against the said Plaintiffs, until the said Defendant shall fully answer the Plaintiff's Bill, and this Court make other Order to the contrary; but the said Defendant is in the mean Time at Liberty to call for a Plea. and to proceed to Trial thereon, and for want of a Plea to enter up Judgment; but Execution is hereby stayed.

Docquet upon an Injunction on a Dedimus.

HE King, and fo forth; To-his Counfellors, Attornies, Solicitors, and Agents, Greeting: Whereas it is represented unto us in our Court of Chancery, on the Part of A. B. and C. D. Complainants, that they have lately exhibited their Bill of Complaint in our faid Court of Chancery, against you the faid E. F. Defendant, to be relieved touching the Matters therein contained; and that you the faid Defendant E. F. being ferved with a Writ, iffuing out of the faid Court, commanding you to appear to and answer the faid Bill, have appeared, but for Delay have craved a Commission to answer in the Country; and yet in the mean Time, you unjustly, as is alledged, profecute the faid Complainants at Law, for and touching the Matters in the faid Bill complained of: We therefore in Consideration of the Premisses, do hereby strictly command and injoin you the faid E. F. Defendant, and all and every the Persons before mentioned, under the Penalty of Two Hundred Pounds, to be levied on your and each of your Lands and Tenements, Goods and Chattels, to our Use, that you and each of you do henceforth absolutely defift and forbear from all further Proceedings at Law against the faid Complainants, or either of them, touching any of the Matters in the faid Bill complained of, until you the faid Defendant E, F. shall fully answer the said Complainants Bill, and this Court make other Order to the

P

in fw

fit

the

the

Bil

tha

fair

ing

her

sha

the contrary; and this you nor either of you are in any wife to omit, under the Penalty aforesaid: But nevertheless the said Defendant E. F. is at Liberty to call for a Plea, and proceed to Trial thereon, and for want of a Plea to enter up Judgment; but Execution is hereby stayed. Witness the King at Westminster the—Day of—in the—Year of his Reign.

Order for an Injunction on an Attachment.

At the Rolls. Thursday the Day
Master of the Rolls. Tear of the Reign of
our Sovereign Lord
King George the Second. Between A. B.
Plaintiff, and C. D.
and E. F. Defendants.

Day informed by Mr.—being of the Plaintiff's Counsel, that the Desendants being served with Process to appear to and answer the Plaintiff's Bill, refuse so to do, but sit an Attachment in Contempt for want thereof; and yet in the mean Time prosecute the Plaintiff at Law for the Matters in the Bill complained of: It is thereupon Ordered that an Injunction be awarded against the said Desendants, for Stay of their Proceedings at Law, for and touching any Matters here in Question, until the said Desendants shall appear to and fully answer the Plaintiff's Bill.

Of Interlocutory Batters.

Bill, clear their Contempt, and this Court make other Order to the contrary: But the said Defendants are in the mean Time at Liberty to call for a Plea, and proceed to Trial thereon, and for want of a Plea to enter up Judgment; but Execution is hereby stayed.

Docquet for an Injunction on an Attachment.

HE King, and fo forth, To-their Counsellors, Attornies, Solicitors, and Agents, Greeting: Whereas it is represented to us in our Court of Chancery on the Part of A. B. Complainant, that he hath lately exhibited his Bill of Complaint in our faid Court of Chancery against you the said C. D. and E. F. Defendants, touching the Matters therein contained; and that you the faid Defendants being ferved with a Writ, iffuing out of our faid Court, commanding you to appear to and answer the faid Bill, have not obeyed the same, but are in Contempt to an Attachment, for not appearing to and answering the faid Bill; and yet in the mean Time, you unjustly, as is alledged, profecute the faid Complainant at Law, touching the Matters in the faid Bill complained of: We therefore, in Consideration of the Premisses, do strictly injoin and command you the faid C. D. and E. F. and all and every the Persons before mentioned, under the Penalty of two Hundred Pounds, to be levied on your and each of your Lands, Goods and Chattels, to our Use, that you and each of you do absolutely defift from all farther Proceedings at Law against the said Com-

# Of Injunations.

Complainant, touching any of the Matters in the faid Bill complained of, until you and each of you shall appear to and fully answer the Complainant's faid Bill, clear your Contempts, and this Court make other Order to the contrary; but nevertheless the said Defendants are at Liberty to call for a Plea, and proceed to a Trial thereon, and for want of a Plea to enter up Judgment; but Execution is hereby stayed. Witness the King at Westminster the—Day of—in the—Year of his Reign.

## Injunction.

God, of Great Britain, France and Ireland King, Defender of the Faith, and so forth, To—his Counsellors, Attornies Solicitors and Agents, and every of them Greeting: Whereas it hath been represented unto us, in our Court of Chancery, on the Part of—Complainant, that he hath lately exhibited his Bill of Complaint into our said Court of Chancery against you the said—Defendant, to be relieved touching the Matters therein contained; and that you the said Defendant being served with a Writ, issuing out of our said Court, commanding you to appear to and answer the said Bill,

\* have not obeyed the same, but are in Contempt \* If Injunction to an Attachment for not appearing to and an- on a Ded. &c. swering the said Bill; and yet in the mean (Vide post.) Time you unjustly, as is alledged, prosecute the said Complainant at Law, touching the Matters in the said Bill complained of: We

Of Interlocutory Matters.

therefore in Consideration of the Premisses, do strictly injoin and command you the faid and all and every the Persons before mentioned, under the Penalty of Two Hundred Pounds, to be levied on your and every of your Lands, Goods, and Chattels, to our Use, that you and every of you do abfolutely defift from all farther Proceedings at Law against the said Complainant, touching any of the Matters in the faid Bill complained of, until you the faid Defendant shall have fully answered the faid Bill, cleared your Contempt, and our faid Court shall make other Order to the contrary: But nevertheless, the said Defendant is at Liberty to call for a Plea, and to proceed to Trial thereon; and for want of a Plea, to enter up Judgment; but Execution is hereby flayed. Witness ourself at Westminsier this-Day of-in the-Year of our Reign.

### On a Dedimus.

Note; In the Injunctions mark'd a, b, c, these Words are to be lest out (viz.) bave cleared your Contempt.

To which Bill you the faid Defendant have appeared, but for Delay have craved a Commission to take your Answer in the Country.

# On an Order for Time.

TO which Bill you the faid Defendant have appeared, but for Delay have obtained an Order of our faid Court for time to answer the same; and yet in the mean Time prosecute, &c.

11

u

C

C

fo

fa

th

bo

ev

an

# On an insufficient Answer.

To which Bill you the faid Defendant have appeared, but for Delay have put in an infufficient Answer; and yet in the mean time prosecute, &c.

On an Attachment for want of an Anfwer.

To which Bill you the said Defendant have appeared, but have not answered the same, and are in Contempt to an Attachment for want thereof; and yet in the mean time prosecute, &c.

An Injunction to Stay committing Waste.

GEORGE the Second, &c. To A.B. and his Workmen, Labourers, Servants and Agents, and each and every of them, Greeting: Whereas it hath been represented unto us in our Court of Chancery, in a certain Cause there depending, wherein C. D. is Complainant, and you the faid A. B. is Defendant, on the Part of the faid Complainant, That, &c. [as in the Order] We therefore, in Consideration of the Premisses aforefaid, do strictly injoin and command you the faid A. B. and your Workmen, Labourers, Servants and Agents, and all and every one of you, under the Penalty of One Thousand Pounds, to be levied upon your, and each and every of your Lands, Goods and

and Chattels to our Use, that you, and every one of you do from henceforth altogether absolutely desist from selling or cutting down any Timber or other Trees, standing, growing or being in or upon the Premisses in Question, or from committing or doing any other or further Waste or Spoil in or upon the said Premisses, or any Part thereof, until our said Court shall make other Order to the contrary. Witness, &c.

A special Injunction to stay Execution till the Hearing.

FORGE, &c. To C.D. his Counsellors. Attornies, Solicitors, and Agents, and every of them Greeting: Whereas it hath been represented unto us in our Court of Chancery on the Part of A. B. Complainant, against you the said C. D. Defendant, that the Complainant being, &e. [ fet forth the Allegation as in the Order therefore it was prayed that the Complainant might have an Injunction for Stay of your the faid Defendant's Proceedings at Law until the Hearing of the Cause: We therefore in Consideration of the Premisses aforesaid do strictly injoin and command you the faid C.D. and all and every the Persons before mentioned, under the Penalty of One thousand Pounds, to be levied upon your and every of your Lands, Goods and Chattels to our Use, that upon the faid Complainant's giving unto you the faid Defendant C. D. Judgment on the faid Bond, with a Release of Errors (and confenting not to bring any Writ of Error) subject to the Order of our faid

f

a

faid Court, that you and every of you do absolutely desist from taking out Execution against the said Complainant until the Hearing of this Cause by our said Court of Chancery. Witness, &c.

Aspecial Injunction to stay the Defendants from copying, engraving, &c. and selling of Prints, pursuant to an Act of Parliament 8 Geo. 2.

GEORGE, &c. To—and also to their and every one of their Servants, Workmen and Agents, to all and every of them, Greeting: Whereas on the-Day of-, and on the-Day of-last, it was alledged to us in our Court of Chancery, by Counsel on Behalf of - and -his Wife, Plaintiffs, against you the --- Defendants, that by an Act of Parliament made in the eighth Year of our Reign, it is (amongst other Things) enacted, that from and after the twenty-fourth Day of June One Thousand seven Hundred and thirty-five, every Person, who should invent and defign, engrave, etch or work. in Metzotineto or Chiaro obscuro, or from his own Works and Inventions should cause the same so to be done, should have the sole Right and Liberty of Printing and Reprinting the same for the Term of Fourteen Years, to commence from the Day of the first publishing thereof, unless by the Confent of the Proprietor first had in Writing, and figned in the Presence of two or more credible Witnesses, under the Penalties in the

n

d

d

ur

1-

D.

fe

ny

ur.

# Df Interlocutory Batters.

the faid Act particularly mentioned: That the faid Plaintiff-fince the faid twentyfourth Day of June One Thousand seven Hundred and thirty-five, hath with great Labour and Expence invented, defigned, etched and engraved about --- Prints, being the Representations of, &c. And on the — Day of —1737 published four of the faid Prints representing--and--; And that notwithstanding the faid Act of Parliament, you-the faid Defendants have copied, published and fold the faid four last mentioned Prints, as by the Affidavit of the Plaintiff --- read appeared; to be relieved wherein, the faid Plaintiffs have exhibited their Bill in our faid Court of Chancery against you the faid Defendants, as by the Six Clerk's Certificate appeared, and you the faid Defendant -having put in your Answer thereto, thereby admit to have fold and published the said Prints, but say they were sent to you by the said Defendant, and that as foon as you was inform'd of the faid Plaintiff's Right, you fent them back again: We having Regard to the Matters aforesaid, and on reading Affidavits of Notice of the faid Motions, do therefore strictly command and injoin you the aforesaid Defendants --and your Servants, Workmen and Agents, and all and every of you, under the Penalty of One Thousand Pounds to be levied upon your and each of your Lands, Goods and Chattels, to our Use, that you, and each, and every one of you, do from henceforth altogether defift from copying, engraving, etching,

ir

re

C

C.

m

th

D

Po

pla

are

in

 $\mathbf{E}_{\mathbf{x}}$ 

bee

Me

do;

bee

and

not

Inju

Def

etching, working, publishing and felling all or any of the aforesaid Prints, until the further Order of our said Court of Chancery. Witness, &c.

AWrit of Injunction for the Defendant to deliver Possession of Lands to the Plaintiff, pursuant to a Decree.

GEORGE the Second, &c. To C. D. and all other Person and Persons whatfoever, who are in Possession of, or have or claim any Right, Title or Interest whatfoever of, in or to all or any Part of the Messuage, Lands, Tenements or Premisses in Question, Greeting: Whereas it hath been represented unto us in our Court of Chancery, in a Cause wherein A. B. and E. his Wife are Complainants, and you the faid C. D. are Defendant, that by the Decree made in this Cause, it was ordered, that you the Defendant C. D. should deliver Possesfion of the Premisses in Question, and all Deeds and Writings in your Custody or Power relating thereto, to the faid Complainants; that you the Defendant, who are in Possession of the Messuage and Lands in Question, was served with a Writ of Execution of the faid Decree, and have been required to deliver Possession of the Messuage and Lands, which you resuse to do; and a Commission of Rebellion having been made out against you the Defendant. and return'd, that you the Defendant are not to be found, it was ordered, that an Injunction be awarded against you the faid Defendant, to injoin you to deliver Possef-

d

e

10

6-

ut

all

of

on

nd

b,

th

ng, ng,

fion of the faid Messuage and Lands to the faid Complainants, pursuant to the faid De. cree: We therefore in Confideration of the Premisses do strictly injoin and command you the faid Defendant C. D. and all and every other Persons before named, under the Penalty of One Thousand Pounds, to be levied upon your, each and every of your Lands, Goods and Chattels, to our Use, that you, each and every of you, do deliver the Possession of the said Messuage, Lands and Premisses, and of every Part and Parcel thereof, to the faid Complainants A. B. and E. his Wife, pursuant to the faid Decree: And hereof fail not at your Pe-Witness, &c.

Certiorari.

 $f_0$ 

R

ng

Bill nd d a hat Thii Van ithe ot s in

er y

Titne

## Certiorari.

A Certiorari is a Writ out of Chancery to an inferior Court of Record to remove and certify the Record of a Cause.

Two Plaintiffs here sue for Lands in the County Palatine of Durham; one of them lives in Middlesex, and the other is an old infirm Man, and unable to follow the Suit; therefore a Certiorari was granted to the Chancellor of Durham to certify the Proceedings depending before him into this Court. Chan: Rep. 68. [Vide post. Certiorari Bills.]

## A Writ of Certioraria

GEORGE the Second, &c. To the Mayor and Aldermen of London, Greetng: We willing, for certain Caufes, to be tertified of and upon a certain Petition of Bill of Complaint before you, against C. D. nd E. F. at the Suit of A. B. lately exhibitd and now depending; commanding you hat the Petition or Bill aforefaid, with all hings touching the same, by whatsoever lames the Parties aforefaid, or any, or ither of them, are or is fet down, before us our Chancery', truly, fully and exactly, s in your Custody they now remain, una er your Seals distinaly and openly ye nd immediately, and this Writ, that furper thereof we may cause to be done, at which of Right ought to be done. fitness Ourself at Westminster the-Day -in the-Year of our Reign.

Q 2

ri.

Note;

#### Of Interlocutory Patters.

Note; This is an open Writ, upon a double 5 s. 6 d. Stamp.

Indorse, By the Lord High Chancellor of Great Britain.

In the Matter of C. D. and another.

21 Feb. 1740. This Writ allowed by the Court [meaning the Lord Mayor's Court.]

The Answer of Sir—, Knt. Lord Mayor, and the Aldermen of the City of London.

#### Procedendo.

A Procedendo is a Writ directed to the Judge of an inferior Court, requiring him to proceed in a Cause removed hither by Certiorari, &c. on the Plaintiff's Sugestion not being sufficiently proved. Also it is used where the Cause is stayed for a Time by a Supersedeas.

## Ne exeat Regno.

I S a Writ to restrain a Person from going out of the Kingdom without the King's Licence, or Leave of this Court.

It has been granted in private Concerns, where there has been Danger of Subterfuge from the Justice of the Nation. 2 Chan. Ca. 245. And it has been granted to stay a Defendant from going to Scotland; for though

it is not out of the Kingdom, yet it is out of the Process of the Court, and within the same Mischief. 2 Salk. 702. 3 Mod. 127, 169. 4 Mod. 179. 1 P. Will. Rep. 263. [Vide Cases temp. Talbot 196.]

Note; In this Case the Condition of the Recognizance must be, not to go out of the

Realm, or to Scotland.

It is generally granted on Commencement of a Suit against a Man in this Court, when the Plaintiff apprehends he will fly to foreign Parts, and thereby avoid the Justice of the Court, upon an Affidavit thereof, and of such Sum of Money as the Defendant is indebted to the Plaintiff. It is now a remedial Writ, and as such, upon due Application, by Motion, or Petition, may be granted the Plaintiff.

That this Writ lies for a private Matter without a Bill, vide 1 Chan. Ca. 116. Read against Read. 2 Chan. Rep. 19. F. N. B. 85.

1 Ha. 60.

6-

A Solicitor's Bill being taxed and reported overpaid 60 l. the Client, on Motion and Affidavit of his being about to go beyond Sea, had a Ne exeat Regno, though no Bill in Court, whereon to ground the Writ. Loyd ver. Cardy, Preced. in Chan. 171.

This Writ hath been granted in Chancery to stop one from going beyond Sea to avoid a Sentence in the Ecclesiastical Court. Sir Jerom Smithson's Case, 2 Vent. 345.

A Person having my Money, and being about to go out of the Kingdom, I may, by Suit, stay him here till he hath given Security to pay me. Vide Stat. 5 Rich. 2. 6. 2. Crompt. Fur. 64. Toth. 136.

It is at this Time commonly directed to the Sheriff only, to make the Party find fuf-

2 3 ficient

Realm without the Order of the Court; and on his Refusal to give such Bail or Surety to the Sheriff, to commit him to Prison.

The Party that sues, commonly marks on the Back of the Writ in what Sum the Bond for yielding Obedience to the Writ shall be: And generally the Penalty is dou-

ble fuch Sum.

When the Party is taken, he must give Bond to the Master of the Rolls in such Penalty as the Writ requires, for yielding Obedience to it, or satisfy the Court by Answer, Affidavit or otherwise, that he hath no Design of leaving the Kingdom, nor is indebted to the Plaintiss; then he may give Notice, and move the Court that the Ne exeat Regno may be discharged; and upon hearing Counsel on both Sides, the Court will either discharge or continue it.

If the Person, against whom the Writ issues, answers, and denies the Equity of the Bill, and if the Court, upon hearing Counfel on both Sides, see no Cause to the con-

trary, the Writ will be discharged.

A Surety in a Ne exeat Regno is not to be discharged upon the Desendant's putting in his Answer, nor even after a Decree against the Desendant, and Commitment for 19000l. decreed against him; for if there is no Danger of the Desendant's going beyond Sea, being in Prison, then the Surety is in no Danger. Preced. Chan. 230.

Note; It hath been held an Abuse of this Process to break open Doors, and take the Party in Bed; but yet the Court, for this Cause, would not order him to be set at Liberty.

berty.

## Ne exeat Regno.

EORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and fo forth, To our Sheriff of Middlesex, Greeting: Whereas it is represented unto us in our Court of Chancery, on the Part of A. R. Complainant against C. D. Defendant, amongst other Things, that he the said Defendant is greatly indebted to the faid Complainant, and defigns quickly to go into Parts beyond the Seas, as by Oath made on that Behalf appears, which tends to the great Prejudice and Damage of the faid Complainant; therefore, in order to prevent his Injustice, We do hereby command you that you do without Delay cause the said C. D. personally to come before you, and give fufficient Bail or Security in the Sum ofthat the faid C. D. will not go, or attempt to go into Parts beyond the Seas, without Leave of our faid Court; and in Case the faid C. D. shall refuse to give such Bail or Security, then you are to commit him the faid C. D. to our next Prison, there to be kept in safe Custody, until he shall do it of his own Accord; and when you shall have taken fuch Security, you are forthwith to make and return a Certificate thereof to us in our faid Court of Chancery, distinctly and plainly under your Seal, together with this Writ. Witness Ourself at Westminster the - Day of in the Year of our Reign

Homine

.

i-

# Homine Replegiando.

This Writ is feldom used. It lies against one who clandestinely takes or conveys away, or keeps in his Custody another Perfon against his Will or Consent. It is obtained on Affidavit of the Matter, and Petition or Motion to the Lord Chancellor: And it is sometimes brought where Insants have been taken out of the Custody of their Guardians, &c. and this Court, 'tis said, may proceed herein by Order without Writ.

An Infant was sent into France by his Uncle, without the Consent of the Guardian; a Homine Replegiando was awarded, and the Uncle ordered to send for the Boy

back again. 2 Chan. Ca. 237.

A Wife can't, either by herfelf, or Prochein Amy, bring this Writ against her Husband, for he has by Law a Right to the Custody of her, and he may, if he thinks fit, confine her, but must not imprison her; if he does, 'twill be good Cause for her to apply to the Spiritual Court for a Divorce propter Sevitiam. But the Nature and Proceedings in a Writ de Homine Replegiando are such as can't be maintained by a Wife against her Husband. Atwood ver, Atwood, Gilb. 149. Vide Fitz-Gibb. 106. where feveral Persons were appointed Guardians of a young Woman, and one of them got her (being nine Years of Age) married; the Court granted this Writ against the Guardian and the Husband, but as to the young Woman the Court made an Order for the Guardian and Husband to produce her in Court on a Day certain. Habeas

## Habeas Corpus.

THIS Writ is obtained either upon Motion or Petition, but commonly on Motion.

It is generally used to bring up Prisoners to shew Cause why they do not appear to, or answer a Bill, and in order to a Party's appearing, or answering and clearing his Contempts, so that he may be discharged, or such Order be made touching the Matter, as the Court shall see Cause.

It is directed to the Warden of the Fleet, Marshal of the King's Bench, or Sheriff, or some other Person where the Party is in Custody, to bring into this Court the Body of the Person in Custody at the Return of

the Writ.

n

e

It is ferved by delivering the Writ itself under Seal to the Warden, Keeper, or other Person in whose Custody the Party is, and keeping a Copy thereof: And if he obey it not, then iffues an Alias, and so a Pluries, and afterwards an Alias Pluries; which, if he yields no Obedience to, nor makes some Return thereupon in Excuse, and which the Court shall think sufficient, then if he be an Officer, or Minister of this Court, and it be touching a Cause depending here, the Court will punish his Contempt. And if it be for a Matter at large, and the Keeper of the Prison of ey not the Writ, the Party has his Remedy by the Stat. 30 Car. 2. cap. 2.

And a Prisoner in a County Gaol, or in B. R. being in Contempt for not performing a Decree of this Court, may be brought up

by this Writ, and turned over to the Fleet, whence he is not to go till he has obeyed

the Decree. 2 Chan. Rep. 151, 192.

And where a Prisoner is brought up by Habeas Corpus, and turned over to the Fleet Prison, and there lies in Contempt for not performing a Decree of this Court, the Court upon Motion, will order a Sequestration against him to fequefter his personal Estate, and the Rents and Profits of his real Estate, until he shall have fully performed the Decree, cleared his Contempt, and the Court take other Or. der to the contrary: And generally he must not only fully perform the Decree, but pay all the Costs relating to the Sequestration, and the Fees of the Sequestrators, which are 6s. and 8 d. a Day a-piece, fo long as they remain in Possession of the Estate sequestred. And upon a personal Estate being sequestred, and the Decree remaining unperformed, the Court will order it to be fold for the best Price by the Sequestrators, and the Money arifing thereby to be paid to the Party, in part of what is decreed to him; and nevertheless the Sequestration to be continued as to the Sequestrators sequestring the Rents and Profits of the real Estate, until the Party has fully performed the Decree, &c.

A Prisoner in Execution, brought up to this Court by this Writ, shall be remanded to the Prison from whence he came.

But where a Prisoner is in Execution, you may move the Court for an Habeas Corpus cum causis directed to the Sheriff; and the Prisoner being brought up by such Writ, the Court orders him to be turned over to the Feet Prison, where he is to remain charged with such Execution, and such other Matters

Babeas Coppus.

as he was before charged with in such other Prison from whence he came, until he be not only fully discharged thereof, but also fully perform the Order or Decree of this Court, whereby he was turned over to the Fleet Prison.

Habeas Corpus to the Warden of the Fleet.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and fo forth, To the Warden of our Prison of the Fleet, or his Deputy there, Greeting: We command you that you do on the - Day of-bring before us into our Court of Chancery, wherefoever it shall then be, the Body of -- by whatfoever Name, or Addition of Name he is known or called, who is detained in our faid Prison in your Custody, to perform and abide fuch Order as our faid Court shall make in this Behalf; and hereof fail not, and bring this Writ with you. Witness Ourself at Westminster the Day of in the Year of our Reign.

#### CHAP. III.

# Of Persons favoured in Equity.

UNDER this general Head may be comprehended Infants, or Minors, Ideots, Lunaticks, Guardians, Prochein Amy's, Trustees, Feme Coverts, Heirs, Executors, Administrators, and also Paupers.

With Respect to Infants, let us consider, first how they sue or defend, and are prosecuted; and how far they are favoured in Equity.

## Of Infants.

A L L Persons, before the Age of Twenty-one, are here called Infants.

An Infant may sue in this Court as Plaintiff by his Prochein Amy, or next Friend; but if he defends a Suit, it must be by a Guardian, assigned or appointed him by the Court, and his Answer is taken upon the Oath of the Guardian; but the Infant himself does not swear to the Answer.

Where an Infant exhibits a Bill, there is no Occasion for a Guardian to be affigued him by the Court; but he exhibits his Bill by some proper Person, his Prochein Amy, or next Friend, who is liable to pay the Costs of the Suit to the Defendant, in Case the Court orders any Costs to be paid: But where the Infant is Defendant, the Guardian affigued by the Court is to be called by that Name; yet if the Guardian be so called, tho

tho' 'tis at Law, where the Infant is Plaintiff, 'tis no Cause of Demurrer.

If an Infant being ferved with a Subpana, will not appear to a Bill, on Affidavit of ferving the Subpana an Attachment iffues against the Infant, and Counsel moves upon the Attachment for an Order for a Messenger to bring the Infant into Court, and being brought into Court, and no one offering on his Behalf to be affigned his Guardian, the Court usually orders the senior Six Clerk not towards the Cause to be affigned his Guardian, to appear to the faid Bill, and answer and defend the faid Suit. Also if an Infant appears to a Bill, and refuses to anfwer, an Attachment issues against him for not answering; but he cannot be arrested upon the Attachment; but Counsel must move the Court upon the Attachment for a Messenger to bring the Infant into Court, and the Court will make fuch Order as aforefaid. But commonly fome Relation or Friend of the Infant prays the Court to be appointed Guardian for the Infant, to anfwer and defend fuch Suit, which the Court orders accordingly; and fuch Answer must be always fworn by fuch Guardian. And if the Court decrees a Guardian to perform a Decree on Behalf of the Infant, the Guardian is obliged to perform it, and may be committed to the Fleet for Disobedience of fuch Decree.

e

ill

of

ts

i-

by

d,

The Interest of Infants is very much regarded and taken care of in this Court.

Any Person may, as Prochein Amy, exhibit a Bill in the Name of an Infant, but can't in the Name of a Feme Covert, without her Consent. Preced. in Chan. 376.

An

An Infant may present to a Living at one or two Years of Age, because his Guardian is supposed to find a fit Person, and the Bishop to confirm his Choice. MSS. Ca. in Chan. Arthington ver. Coverly & al' tempore King Chan. Hil. 6 Geo. 2.

An Infant may, by his Prochein Amy, call his Guardian to an Account, even during his Minority: And if a Stranger enters and receives the Profits of an Infant's Estate, he shall, in this Court, be look'd upon as a

Trustee for the Infant. 2 Vern. 342.

And if a Man intrudes upon an Infant's Estate, he shall receive the Profits but as Guardian, and the Infant shall have an Account against him as such. 1 Vern. 295.

If a Man receives the Profits of an Infant's Estate, during his Minority, and for many Years after he comes of Age, before any Entry is made upon him; yet he shall account for the Profits throughout. Pasch.

1699. Tallop and Holworthy.

And an Infant cannot be foreclosed, without a Day to shew Cause (which is commonly six Months) after he comes of Age; but the proper Way in such a Case is to decree the Lands to be fold to pay the Debts, and that will bind the Infant. I Vern. 295. But if there be a Mortgage which depends upon a disputable Title, so that no Money can be had by an Assignment of it over, this Court will not decree an Infant to be foreclosed till [Six Months after] he comes of Age. 2 Vent. 351.

Decrees are but very rarely made against Infants without a Day to snew Cause (which is commonly six Months) after they come of Age. But if Lands are devised to be sold for Payment of Debts, they may be decreed to be fold without giving an Infant Heir a Day to shew Cause, for nothing descends to him; but otherwise if he be decreed to join in the Sale. Cooke and Parsons, 2 Vern. 429. Or where the legal Estate is in Trustees and an Execution of the Trust is to be directed, there is no Occasion to give the Infant a Day to shew Cause. MSS. Ca. in Cha. Thoroton against Blackbourne, 12 May 1731. Temp. King C.

If an Infant answers by Guardian, and a Decree is against him without a Day to shew Cause, such Answer shall not be read, or admitted as Evidence against him when of Age; but otherwise of a superannuated Desendant, who puts in an Answer by his Guardian. Trin. 1704. Sir Richard Leving

and Lady Caverly.

This Court will not fuffer an Infant to be prejudiced by the Neglect of his Trustees. Mich. 1699, Allen and Sayer, 2 Vern. 368.

With the Approbation of the Infant's Relations, this Court may allot him Maintenance out of a Trust Estate, tho' there be no Provision for it in the Trust. Trin. 1691. Englefield and Englefield, 2 Vern. 236.

And this Court upon the Application of Guardians, will fettle the Maintenance of

Infants. 3 Chan. Ca. 136.

It may not be improper to observe in this Place, bow far Infants are bound bere, or less

favoured than at Law.

Infants may be farther bound here than at Law. And that they have been obliged to answer in this Court, when the Parol should have demurred at Law. Toth. 108. Sed vide I Vern. 173, 428.

The

Df Perfons favoured in Equity.

The Answer of an Infant may be referr'd for Scandal; but it being upon the Oath of the Guardian, he, and not the Infant, shall be liable to pay the Costs, or rather the Counsel who signed such Answer.

A Sequestration may iffue against an In-

fant. 2 Chan. Ca. 163.

And an Infant shall be bound by Conditions in Fact, and such Conditions as he can perform in Equity as well as in Law. 1 Mod 300. 2 Vern. 343.

Note; An Infant is bound by all Conditions, Charges and Penalties, in an original Conveyance, whether he comes to the Estate by Grant or Descent. 1 Inst. 233. b.

And a Gift to an Infant, on Condition, binds him as well as another Person. Trin. 1706. Scot and Houghton, 2 Vern. 560. See

more 2 Vern. 232, 479.

And an Infant Truftee, by Stat. 7 Ann. cap. 19. may be obliged to convey, but otherwise where he takes an Interest in the Land, as where Lands are given to an Infant charged with the Payment of the Money, the Court will not order him to join in the Sale, &c. till he comes of Age. MSS. Ca. Anon. Temp. King C. Hil. 6 Geo. 2.

fi

in

fo

ot

Si

no

An

2 V

Sui

and

fuff

Del

Though no Proceedings may be against an Infant on a Judgment, or Statute at Common Law, yet 'tis otherwise in this Court 2 Chan. Ca. 164. I Danv. 260. 8. S. P. Also an Infant may be here compell'd to give a Discharge of a Debt due to, and received by him. And in some Special Cases he shall be concluded by his Agreement. As a Father being about to convey some of his Lands to his younger Son, the elder Son promised to give the younger 1001. if the Father would forbeat

forbeat it; in this Case the elder being an Infant, was ordered to perform it; but regularly, tho an Infant be twenty Years old, and makes a Contract never so much to his Advantage, &c. yet the Court will not conclude him, not make an absolute Decree against him, tho by his own Consent, of the Consent of Parents, &c. except in some special Cases upon the Merits of the Cause.

Proceed we now to see what Asts of In-

fants are good, void, or voidable.

If an Infant sells Lands for Money, with which he purchases other Lands, yet this Sale made by him shall not be helped in this Court, because he is disabled by a Maxim in Law. 16 Jac. 1. Dodderidge and Hutton,

1 Rol. Abr. 376.

1.

.

10

d,

210

he

the

CA

tan

om.

urt

Alfa

ve 1

ived

Mall

Fa-

ands

nifed

rbeat

But if an Infant makes an Agreement, and receives Interest under it after Age, fuch Agreement shall he decreed against him. Hill. 1682. Franklin and Thornebury, 1 Vern. 132. So if he exchanges Lands, and continues in Possession after Age, he shall be bound by it. 2 Vern. 225. If an Infant defires that Lands subject to a Trust for paying younger Children's Portions may not be fold, and offers by his Answer to settle other Lands for raising the Portions, he shall be bound by such Offer, if the other Side are thereby delayed; and if he does not, immediately after Age, apply to the Court to retract his Offer, and amend his Answer. Cecil and The Farl of Salisbury, 2 Vern. 224. And if an Infant borrows a Sum of Money, for which he gives a Bond, and devises his personal Estate (being of sufficient Capacity) for the Payment of his Debts, particularly those he had fet his

Hand to, this Bond-Debt shall be paid. 1651. Hampton and Lady Sydenbam, Nel. Chan.

Rep. 8vo, 55.

A Decree shall bind an Infant where there is a mutual Benefit. Lord Guernsey and Rodbridges, Gilb. 3, 4. I Vern. 132. 2 Vern. 224, 225. I Chan. Ca. 256. Abr. Eq. Ca. 283, &c.

If an Infant Executor assents to a Legacy, such Assent shall be good, if there are sufficient Assets besides to pay Debts; other-

wife not. I Chan. Ca. 256.

But an Infant Executor, before Seven. teen, cannot bind himself by his Assent to a Legacy. 5 Rep. 29. Cro. Eliz. 719. And an Infant may administer at Seventeen, but cannot commit a Devastavit till of full Age. 1 Vern. 328.—Where an Infant is made Executor, Administration must be granted cum Testamento annexo, to his Guardian or next Friend durante Minoritate; but the Administration ceases when the Infant is seventeen Years old; fo if an Infant Executrix, before seventeen, takes a Husband of full Age, the Administration immediately ceases. 5 Rep. 29. 6 Rep. 67. 2 Inft. 398. But if an Infant is intitled to an Administration of the Goods of an Intestate, Administration must be granted to another till he is Twenty-one; because a Minor cannot enter into a Bond, with Sureties, to administer faithfully, as required by the Statute 22 & 23 Car. 2.

An Infant Female may make a Will, and dispose of her personal Estate at Twelve; an Infant Male at Fourteen, if proved to be of Discretion. 2 Vern. 469. And an Infant may be a Trustee. 2 Vern. 561.

And

stants or formedat

And by 7 Ann. cap. 19. Infants seised or posfessed of Estates in Fee in Trust, or in Mortgage, may make Conveyances of such Estates. Infants cannot be charged on a Contract, nor as Bailists, nor for Goods to carry on a Trade; and therefore, when made Factors, Security should be taken from their Friends for their accounting.

For the general Jurisdiction and Care of this Court over Infants, see 3 Chan. Ca. 136, where it is declared, That Guardians are appointed by Writ for Infants, and one of

a to the cold beat or taped points

simple samuel es a lord en son de les

become thought an appropriate to the second of

and Tourist And the second of the second of

the continues a second

more Guardians jointly.

nto h-23

ill, at if

69. 61. Ind

R 2

of the District of

Of

## Of Ideots and Lunaticks.

A N Ideat is a natural Fool, or one of unfound Mind and Memory from his Nativity.

A Lunatick is a Person who is sometimes of good and sound Memory and Understanding, and sometimes not; aliquando gandes

lucidis intervallis.

If an Inquisition find that such a one was an Ideot for eight Years last past, such Inquisition is void; for an Ideot must be found to be so a Nativitate, otherwise it is not an Ideot, but a Lunatick only. I Vern. 12. vide 3 Mod. 43. S. C. in B. R. where this finding was held sufficient; for the Inquisition sinding the Party an Ideot, the adding eight Years was superfluous.

Ideots, after they are so sound, are to sue and answer by the King's Attorney, &c. But Lunaticks generally sue and answer by their Committees; and if the Lunatick be not named a Party in the Bill, or Information by the Attorney, it is commonly good Cause of Demurrer. I Chan. Ca. 153. But if the Bill, in Nature of an Injunction, is to be relieved against some Act done during his Lunacy, he must not be named a Party, for that were to stultify himself. I Chan. Ca. 113.

Generally a Lunatick ought to be madea Party; but in the Case of Ferome Smith it was over-ruled, and said, the Reason was, That he might not stultify himself; for if he had been a Party, it had been to stultify himself, which the Law does not admit. ibid. And see 1 Chan. Ca. 153. Woolrick's Case. A Bill

01

20

an

na

ca

of

2 (

to

COI

ne

int

low

Eft

can

ber

Ord

not

Mic

was brought by the Attorney General, in the Nature of an Information, for the Benefit of a Lunatick, as in the Case of Smith; and the Defendant demurred because the Lunatick was no Party, which was ruled a good Demurrer; but that in the Case of an Ideot 'tis otherwise. A Lunatick may recover his Understanding, and then he may dispose of his Estate.

Smith's Case was to be relieved against an Act done by the Lunatick, at the Time he was so: But in Woolrick's Case the Bill was to be relieved upon a Marriage Agreement, for the Benefit of the Lunatick, before he was a Lunatick, which did not tend to stul-

tify himself, as the other did.

The King, or his Committee, has an Ideot's Lands in their own Right, by Stat. Prærog. but of a Lunatick's Lands they are only Trustees for the Benefit of the Lunatick; and therefore it seems a Lunatick must be named a Party; Contra of an Ideot, for he

can have no Right in himself.

1

t

ot

1,

ed

Y,

at

ea

it

25,

he

m-

nd

Bill

Was

The Custody of Lunaticks is not a Matter of Right, but of Prudence. Lady Cope's Case, 2 Chan. Ca. 239. It shall never be committed to any that will make Gain of it, or who is concerned to out-live the Lunatick, or his next Heir, as being nearest of Blood, and intitled to the Administration; and the Allowance must be liberal and honourable.

The Committee of a Lunatick has an Estate but during Pleasure, and therefore cannot make Leases, nor any ways incumber the Lunatick's Estate, without special Order of this Court, where the Profits are not sufficient to maintain the Lunatick. Mich. 1684. Foster and Merchant, 1 Vern.

R 3

Of Persons favoured in Equity.

262. Nor can the Committee invest the Profits of a Lunatick's Estate in the Purchase of Lands. Mich. 1690. Audley and Audley,

2 Vern. 192.

If a Man forcibly takes away a Lunatick whilst she is under Commitment, and marries her, 'tis a Contempt, and the Court will commit him; but if the Marriage is afterwards held good in the Spiritual Court (as it may be by being consummated in one of her lucid Intervals) and if upon Inspection it appears that she is restored to her Understanding; the Husband shall be discharged, and the Commission of Lunacy vacated. Trin. 1702. Mrs. Asher's Case.

What Acts of Ideots or Lunaticks are good, void, or voidable, vide 1 Rol. Rep. 1 Chan. Ca. 113, 153. 2 Salk. 427. S. C. 3 Lev. 284. 2 Salk. 576. S. C. Vid. 2 Chan. Ca. 103, 2 Vern. 189. 2 Vern. 678. Vid. 2 Vern. 414

fa

th

ch

na

A

Bu

a]

ou

up

wi

Gi

Gι

ed

112

mit

Ri

fan

I Vern. 155. I Vern. 105.

By a late Statute, Persons being Ideots, Lunaticks, or Non compos mentis, who are seised or possessed of Estates in Fee, or for Life or Years, in Trust, or by Way of Mortgage, are enabled to make Conveyances or Assignments of such Estates, in such manner as the Lord Chancellor shall direct, on Hearing of the Persons for whom such Ideots or Lunaticks shall be seised in Trust, &c. Stat. 4 Geo. 2. cap. 10.

Note; No Order, Affidavit, or Certificate touching any Ideot, Lunatick, or Non compos mentis, shall be made use of in this Court, unless the same be filed with the Clerk of

the Custodies.

For Proceedings upon a Commission of Lunacy, vide towards the End of this Treatise, Vol. 2.

# Of Guardians and Prochein Amys.

the of the Tile of a

A Gnardian is he that hath the Custody and Education of such a Person as is not of sufficient Discretion to guide himself and his Estate; as Minors, Ideots, and Lunaticks.

A Guardianship then of a Minor is an Interest in the Body and Lands, &c. of one

within Age.

A Prochein Amy, or next Friend, is usually taken for that Person, by whom an Infant, a Lunatick, or a Feme Covert sues in this Court. And where a Suit is by a Prochein Amy, who is not sufficient to answer Costs, the Court will order another to be named, who is able and sufficient.

A Bill may be brought by one as Prochein.

Amy to an Infant, without his Confent.

But none can bring a Bill in the Name of a Feme Covert, as her Prochein Amy, without her Confent; and if such Bill be brought upon her Affidavit of the Matter, the Bill will be dismissed.

Andrews ver. Craddock, Gilb. 36. See Abr. Eq. 72. 2 Vern. 711.

Outlawry, or Excommunication in a Guardian, or Prochein Amy, cannot be pleaded or alledged in Disability, where an Infant sues or defends by him; because he acts in auter droit. The like of Executors, Administrators, Trustees, &c. that act in the Right of others.

Guardians are appointed by Writ for Infants Defendants, and one or more Guar-R 4 dians

dians jointly; and this Court may affign one of the Six Clerks to be Guardian to an Infant. 2 Chan. Ca. 163. Nel. Chan. Rep. 8vo. 44. S. P. But a Guardian cannot be other. wife appointed than by bringing the Infant into Court, or his praying a Commission to have a Guardian affigned him. Hill. 1600. Loyd and Carew. Chancery; its Jurisdicti. on as to Guardians, &c. See Gilb. 172. Bar. The Guardianship of an Infant is not affignable over to another. Reynolds and Lady Tenham, Mod. Ca. L. & E. 40. Where a Father may appoint his Creditor Guardian to his Child, vide I Vern. 442. If a Person appointed Lecone and Shiers. Guardian, pursuant to the Statute 12 Car. 2. dies, or refuses to take upon himself the Guardianship, my Lord Chanceller may appoint another Guardian in his Stead.

A Guardian by Common Law may be removed by this Court; but not a Guardian according to the Statute: Yet this Coun may hinder a Guardian appointed by the Father, from abusing the Infant's Person. Foster and Denny, 2 Chan. Ca. 237. And Guardians at Common Law may be removed, or compelled to give Security, if there appears any Danger of their abusing either the Infant's Person or Estate; and there are feveral Instances of this Kind, as Stile 456. Hard. 96. 3 Chan. Rep. 58. 1 Sid. 424 1 Salk. 177. but there are none where a Statute Guardian has been totally removed; Some, where fuch Terms have been impofed on the Guardian, as effectually to prevent his doing any Thing to the Prejudice

I

H

ar ar

CO

The

of the Infant.

## Guardians and Prochein Amps.

The Office and Duty of Guardians confifts in taking care of the Infant's Person, his Education and Estate; for they can do nothing but for the Profit and Benefit of the Infant, nor intermeddle with any Thing but of what they may render an Account. And they are not to break into the Principal of the Infant's Money, unless for Physick, or to bind Apprentice, and the like; which commonly is done by the Approbation and Order of the Court.

They may discharge Incumbrances on the Infant's Estate, I Chan. Ca. 156. I Vern. 436. 2 Vern. 193, and 353. S. C. cited; vid. 2 Chan. Ca. 197. where my Lord Keeper was of Opinion, that a Guardian should pay off a Judgment by the Profits of the Estate: And they may, without any Direction of the Court, pay the Interest of any real Incumbrance, and the Principal of a Mortgage; because that is a direct and immediate Charge on the Land, but not any other real Incumbrance. Hill. 1700. Palmer and Dauby. But they are not compellable to apply the Profits of the Estate of the Infant Heir to pay off the Bond-Debts. Hill. 1707. Waters and Ebrall, 2 Vern. 606. They cannot, with the Rents and Profits, purchase Lands fo as to prevent the Money from going in a Course of Administration. Earl of Winchelsea and Norcliffe, 1 Vern. 403, 435. S. C. 2 Vern. 480.

9

11

d

Te

er

re 6.

3

ta-

d:

00-

re-

ice

'he

If a Guardian takes a Bond for Arrears of Rent, he thereby makes it his own Debt, and shall be charged with it. 26 Car. 2. Whale and Buckley, 2 Chan. Rep. 97. On his Account he shall have Allowance of all reason-

able

able Expences; and if he is robbed of the Rents and Profits of the Land without his Default or Negligence, he shall be discharged thereof upon his Account. I Inst. 89. a. And if a Guardian to an Insant takes an Assignment of the Mortgage, though the Mortgagee never entred; yet per Lord Keeper Wright, as to the Profits received out of the mortgaged Lands, the Guardian shall be taken to be in Possession as Mortgagee, and not as Guardian; but a & is added. a Vern. 471.

Rolls of the High the Art of the Control of the Con

a strict in the street but

al Softer I am 18 1 . The stage of the

The state of the s

the state of the state and state of the stat

The fillips of the property of the second

A The fact of the Charles of

**o**f

jud fha fee if Le Le

owi mu

he Ceft the

En:

R own

### Of Trustees.

7 Hoever has the Possession of Goods or Lands, either hath the absolute Property or Estate in them, by a sufficient Title; or, fo far as that is wanting, is confidered as a Trustee for the Owner. And he that takes upon him a Trust, takes it for the Benefit of the Person for whom he is trusted, and not to take any Advantage to himfelf.

And by Sir John Trevor, Master of the Rolls, the Heir of a Mortgagee shall hold only in Trust for the Executors. MSS. Ca. in Cha. Trin. 7 Ann.

Infants, being Trustees only, by Stat. 7 Ann. cap. 19. may be obliged to convey as the Court shall direct without a Day.

Regularly no Act of the Truftee shall prejudice the Cestuy que Trust; but the Trustee shall make good the Trust. And the Law feems to be the same of the Act of God; for if the Trustee of a Legacy dies before the Legacy is paid, this shall not prejudice the Legatee.

A Trustee may in some Cases sue in his own Name, but ordinarily Ceftuy que Trust

must be made a Party.

What he is compellable to do by Suit, he may do without Suit; as to join with Cestuy que Trust In Tail in a Feoffment; for they are Trustees merely to preserve his Estate.

Regularly he is to have nothing for his own Labour and Pains: Yet if he employs skilful Bailiff, and gives him Twenty Pounds

Pounds per Annum, that must be allowed, for he is not bound to be his own Bailiss. And he shall not pay, but have Costs, except he be guilty of some Breach of Trust, or some wilful Misdemeanor. Toth. 156. Vide 2 Chan. Ca. 138. Nor will the Court ever charge him with imaginary Values, but only as Bailiss, though very supine Negligence might indeed, in some Cases, charge a Trustee with more than he had received; but the Proof thereof must be very strong. 1 Vern. 144.

If a Trustee is robb'd of the Money he receiv'd, he shall be allowed it on Account, the Robbery being proved, altho' the Sum is only proved by his own Oath, for he was to keep it but as his own. 2 Chan. Ca. 2. [Vide 1 Vern. 28. 2 Vern. 137. 2 Chan. Ca.

132. 2 Vern. 548.]

Where there are more than one, there is a Difference between Tuftees and Executors. For Trustees have all equal Power, Intereft, and Authority, and cannot act separately, as Executors may, but must join both in Conveyance and Receipts; for one cannot fell without the other, or defire to receive more of the Confideration Money, or to be more a Trustee than his Partner: So that it would be contrary to Justice to charge them with each other's Receipts, except in Cafe of Necessity, where they so join in Receipt, as not to be diftinguished, what has been received by one, and what by the other. Vide Cro. Car. 312. 2 Vern. 515. 1 Salk. 318. But if two Executors join in the Sale of the Goods, &c. of the Testator, they shall be both chargeable, though one of them only received the Money, for there was no Neceffity

ceffity for their joining. 2 Vern. 570. 1 Salk.

Trustees shall not be examined as Witnesses one against another, except in some special Cases, and that by Order of Court.

A Trustee examined as a Witness was afterwards thought necessary by the Court to be, and was made, a Defendant. Upon Hearing, his Depositions were not allowed to be read, though he should pay no Costs, nor should gain or lose by the Decree, (be it as it would) because the Decree must be against him, and his Depositions are to affirm his own Act.

green anymer and the second second state of the transfer of th

forwers a sacre area were the ones are

then the continue to the county of the count

Voltage Commence of the State o

with the control of the second of the second

AN TELEVISION AND ASSESSMENT AND ASSESSMENT

### Of Feme Coverts.

h

I

ŀ

0

a

ŀ

a

te

B

fo

n

be

be

fu

LEME Coverts, are married Women. And Husband and Wife must both join in Suit for Things merely in Action belonging to the Wife. 1 Chan. Ca. 41. But sometimes the Wife by her Prochein Amy, or next Friend, fues her Husband in this Court; as where she fues him for Performance of a Marriage Settlement or the like: And fometimes she petitions against him, or sues him here for Alimony; as where he turns her away, or she goes away upon ill Usage: Also a Feme Covert hath been allowed to fue here in her own Name, when her Husband was beyond Sea! So in Case where a Husband releas'd the Wife's Debt. A Feme Covert, who has a feparate Maintenance, may fue alone. I Chan. Ca. 35. So may a Wife whose Husband is banished by Act of Parliament; and may act in every Thing as a Feme Sole. 2 Vern. 104 If the Wife answers, and the Husband stands out all Process of Contempt, the Bill can be taken pro Confesso against the Husband only. 2 Chan. Ca. 173. So where a Wife, by Combination, refused to join with her Husband in a Plea. 1 Chan. Ca. 296. A Feme Covert must answer alone, if the Husband is not amenable. 2 Vern. 613. So an Attachment was granted against a Wife, the Husband not being amenable. Mich. 1711. Bell and Commissary Hide. Tho' the Wife's Answer differs from the Husband's, yet it shall not prejudice him, for the can be no Witness against him. 2 Vern. 79. Vide 1 Chan. Ca. 39. Where

Where a Wife is Defendant, you cannot regularly ferve the Wife with Process to anfwer, without ferving the Husband alfo, tho' the Matter in Question concerns the Wife only. But though ordinarily the Wife must not answer alone, yet where Plate, &c. had for many Years before been deposited with her, and the Bill was brought against the Husband and her, and he being in Ireland could not be brought to answer, she was ordered to answer alone. And frequently the Wife is put to answer alone, when the Husband is beyond Sea: But there is usually obtained an Order for the Wife to put in and fwear her Answer separate from her Husband. So where she lives separate from her Husband, she is often ordered to answer alone. 1 Chan. Rep. 68. But if the answer alone without Leave of the Court, the Anfwer will be suppress'd upon Motion.

A Feme Covert to appear and answer without her Husband. Bell ver. Commissary Hide & uxor. See Abr. Eq. C. 61, 64, 65.

In some Cases the Wise has been committed without her Husband. Cary's Rep. 92. But ordinarily, if the Wise be in Contempt for any Matter in this Court, the Husband is also liable to Process of Contempt, and Commitment, as the Case requires.

No Decree can be had against a Feme Covert for her Inheritance, if the Husband will not appear, &c. for her Answer is no Answer without his. Vide 2 Chan. Ca. 39, 173.

But a Feme Covert though an Infant, being Heir of a Mortgagee or Trustee, may be ordered to levy a Fine, and make such Conveyances as Mortgagees and Trustees of full Age. Com. Rep. 615.

The

Of Perfons faboures in Equity.

The Woman and her Husband agreeing to part upon Difference, and he giving her a Sum of Money for her Livelihood, which was put into a Friend's Hand for her, the was allowed to fue alone for this without

her Husband. Cary's Rep. 87.

A Woman divorced from her Husband Causa Frigiditatis, sued in this Court for her Portion, her Father being alive, and recovered it. Barrow's Cafe. Also the Wife being parted from her Husband, and having an Estate to herself, was allowed by the Court to devise it by her Will. Mich. 15 Car. 1. Of Things merely in Action, belong. ing to the Wife, as a Bond, Legacy, &c. She ought to join in Suit; Aliter of a Rent running in the Wife's Right after Marriage; and if the Husband alone should sue the Bond, and be nonfuited or dismissed, that will not conclude the Case; but if he die before Judgment or Decree, the Wife cannot revive the Suit. I Chan. Ca. 41.

If a Wife has a Fortune payable in futuro to be raifed at so much per Annum out of a Term, and the Husband dies insolvent before the Commencement of the Term, her Fortune is not liable to pay her Husband's Debts, unless he makes her some Settlement. MSS. Ca. in Cha. Morgell's Case,

Pafch. 8 Annæ.

Also where a Husband covenants to settle certain Lands upon his Wise, and he asterwards disposes of the Lands, and dies, the Court will order an Account of his Assessand a Purcha e of Lands of equal Value to be settled on her. Harrison ver. Constantine, MSS. Cases in Cha. Pas. 8 Ann.

But

0

lia L

de

w.

ou

tat

wa the

for

ing.

tati han

Fit2

was

the

cree

But where a Citizen of London agrees to leave his Wife so much at his Death, and dies intestate, she cannot both have her Fortune, and her distributive Share according to the Custom too, but must make her Election. Ibid. East against Coggs, Pasch. 8 Annæ.

If a Feme Covert has any particular Fortion, or Sum of Money by Settlement, decreed her, which became due either before or after the Marriage, the Court will not order it to be paid to the Husband, unless he makes a fuitable Settlement upon her, or she appears in Person in Court, and Consents thereto: As in Lady Windsor's Case, Mich. 8 Ann. where, by Act of Parliament, a particular Sum was given her in Lieu of the Lands settled upon her. MSS. Ca. in Chan.

Where the Fortune of a Feme Sole is deposited in Court, and she marries even without Consent of the Court, and first the Husband dies, and then the Wife, without Issue, yet it shall go to the Representatives of the Husband, and not of the Wife, for the Money being in Court, it was always in his Possession, subject only to the Equity of the Wife and the Children, for a reasonable Provision for them, who failing, the Money belongs to his Representatives. MSS. Ca. in Chan. Parker ver. Windham, Temp. Cowper C. 1715.

.

1

of nt

m,

15-

et-

le

et-

af-

Tets

alue

an-

But

But in Nightingale ver. Lockman & Ux. Fitz-Gibb. 148. where the Wife's Portion was paid into the Hands of the Master, and the Husband died indebted, the Court decreed that this Portion was not Assets of

S

the

Of Persons favoured in Equity. the Husband; for as at Law, where Judge ment is recovered by Baron and Feme. the Judgment survives to the Wife, and the

Benefit thereof, & Aquitas sequitur Legem, though it feems to have been determined otherwise in this Court, where the Wife is a Lunatick, for there it has been looked upon as vested in the Husband. Note: The this feems to be, where the Wife furvive

the Husband. a slote Replone vinguarsife C.

the means are fundabled the contract whom there and description be entirely on the lader of the

stales, sic some literal and ton thinks in the

Guiants Pringrecear Amein Book v Shinklind

11

C

an

he

13 M

no

330 in .

Equ

55.

15.

159

A

be j Refi

only Don

direc he

Localities 8 years whereather I apple for 

Lord Web uso standed on ber 2005.

A keyen-be Corvened of Lynna Solens inchestation, the case the maries even

And the state of the Court and the

te i kobania ripis arada than a fi ki sa wath-ha kway tenda wa a kii 1900 ka a a fi kanalan-

tures of her shared and some of the

Moier for the cheer water to the tree in

or vice the let supplished and magewickt backgrifty, oto the Wife and the Children

the residence of the residence from the state of the seed of

ht. The Storey belongs so be Kepreled ...

Actives Michigan Character on Winds Company of the sort of the Common of the sort of the s

while in A was seen about the A ni bind w

displayed as the polymorphism of parallelental

bon and all a draw the short nachbon ale

se preof of a bordalesta se benefit a

the with the east porter than add the Marin State of Colores 14.9

### Of Heirs.

A N Heir is one that fucceeds, by Descent and Right of Blood, to Lands, Tenements and Hereditaments, being an Estate

of Inheritance.

913

1

Pin

-77

Abolt.

Of

And Heirs, as observed before, are some of those Persons who are favoured in Equity. They shall not be disinherited by doubtful or ambiguous Words. 3 Chan. Ca. 131. An Heir shall not be disinherited by Implication. Pigott ver. Sir Henry Penrice & MX. Comyns 250. And where they are disinherited, they shall be favoured in this Court. Vern. 480. Mich. 32 Car. 2. 2 Chan. Ca. 4.

A voluntary Devisee shall have no Assistance against an Heir here, but will be lest to help himself at Law as he can. 2 Chan. Ca. 134. And though a Trustee mis-employ the Money raised on a Trust-Estate, yet it shall not be to the Prejudice of the Heir. 1 Vern. 336. 1 Salk. 115. 2 Vern. 178. [Vide Cases in Equity abridg'd 264 to 276. Maxims of Equity, fo. 3. Ca. 7. 53. c. 1. 10. c. 5. 51. c. 1. 55. c. 2. 57. c. 3. 68. c. 15. 22. c. 3. 67. c. 14, 15. Modern Ca. in L. & E. 32, 90, 122, 157, 159, 171.]

And if a Settlement is made of Lands to be fold in Trust for several Purposes, the Residue is given to B. and his Heirs reserving only 200 l. to be paid to such Person as the Donor should by Writing under his Hand direct; who died without such Direction: the 200 l. will go to the Heir of him who

2 ma

Of Persons saboured in Equity. made the Settlement, and not to B. or his

Heirs. Anon. Com. 345.

If a Will is made, and an Estate of Inheritance is devised from the Heir at Law to a Stranger, the Devisee commonly exhibits a Bill against the Heir at Law in order to examine the Witnesses in perpetuam rei memori. am, to prove the due Execution thereof. And the Heir at Law is at Liberty to cross examine all the Witnesses. And though the Will be proved to be well executed, and the Estate to be well devised, yet the Heir at Law, upon Application to the Court, will have his Costs to be taxed paid him by the Plaintist.

And altho' the Heir at Law should examine several Witnesses to prove the Insanity of the Testator at the Time of making his Will, or that he was imposed upon in making thereof, or that it was not well executed according to the Statute; yet if the Heir at Law fails in these Points, he shall not pay Costs; nor in that Case shall he have Costs, but bear his own Costs.

to

he

th

To

Ex

que

Pr

Dis

be

join

if o

Dan

I

and

Suit

Note; The Plaintiff in bringing such a Bill against the Heir at Law in Order to prove the due Execution of the Will, must pray in Relief, Order or Decree to establish the Will in Chancery; if he does the Desendant may Demur to such a Bill, and set forth he bas a Right to contest the Will at Common Law, and that therefore such Will ought not to be decreed or established here; which Demurrer will be held good, and the Plaintif be obliged to get an Order to amend his Bill.

# Of Executors and Administrators.

A N Executor is he to whom the Execution or Performance of another Man's Will is committed after his Death.

An Administrator is one that hath the Goods of a Man dying Intestate committed

to his Charge by the Ordinary.

And Executors and Administrators differ in little else than in the Manner of their Constitution, their Office and Duty being

almost exactly the same.

t

be

Vil

nay

bas

24,

of to

De-

ntil

hit

0

Executors may charge or be charged in Equity farther than the Law doth charge them. And here they may sue one another. Toth. 74. So one (or both) of them may sue an Executor of an Executor, if he hath gotten the Estate into his Hands, or Devastavit he hath committed. And one Executor alone, without the rest, may be sued here; but he shall be charged for no more than he hath. I Chan. Ca. An Executor Temporary proves the Will, afterwards his Executorship determines: Held, The subsequent Executor may sue here without farther Probate of the Will. I Chan. Ca. 265. Q.

If Executors sever in their Receipts and Disbursements, in such Case they shall only be answerable pro tanto; but if they act jointly, each of them shall answer the whole, if one becometh Insolvent. MSS. Ca. in Cha.

Darwell ver. Burrows, Mich. 8 Ann.

If a Suit be here against two Executors, and one of them appears and answers, the Suit shall not ordinarily be prosecuted against him to a Hearing till the other has answer'd,

S 3

and be brought to a Hearing likewife; for they are but one Person. Vide Cary's Rep. 30.

Two Executors are Plaintiffs, one of them is excommunicate, the other may be severed and the Defendant shall answer him. Toth.

A Person may be allowed to bring a Bill as Administrator, before Administration actually taken out. Barnard. Rep. 320.

How far an Administrator shall be charged with Interest. Vide Barnard. Rep. 390. E

h

th

CI

fes

dil

or

tie

Re

Though an Administrator ought to have Costs given him to the Time of the Decree for the Account, in what Cases the subsequent Costs ought to be reserved. Ibid.

When a Decree is made against an Administrator where Interest shall be reserved.

Ibid.

Where an Obligor is made Executor, it is no Extinguishment of the Debt. MSS Ca. in Chan. Bodily ver. Hill. Trin. 7 Ann.

Executors indifcreetly placing out Money are liable to answer it; ibid. or where Testator dies indebted on Bond, and Asses fufficient come to the Hands of his Executor who detains them, and lets the Interest go on upon the Bond, this Prejudice shall be turned upon himself. Ibid. Anon. Hill. 7 Ann.

Where a Testator leaves no Legacy to his Executor, then the Executor is residuary Legatee, if no Devise of the Residue, for it doth not appear that he hath any Thing else for his Trouble. Foster ver. Mount, MSS. Ca. in Cha. Trin. 7 Ann. and

2 Vent. 349, 359.

A particular Legacy, either specifick of pecuniary, given to Executors that are Strangers Of Erecutors and Administrators.

Strangers in Blood, excludes them from the Surplus: But an Executor, if next of Kin to the Testator, is not excluded from the Surplus; for whoever is confider'd as a Truftee of the Surplus must be so as to the whole Surplus, and the next of Kin cannot be for the whole; as next of Kin he is intitled to a distributive Share. And if there be mote Executors than one, whether Strangers or not, a Legacy to one only, thall not exclude him, nor any of the rest, of the Surplus, for they are joint, and each had Power over the whole. Hunt ver. Berkley, MSS. Ca. in Chan.

Executors placing out Money in Purchafes are liable to answer, if the Ceffuy que Use disapprove of it when he comes of Age; or if they lend Money on personal Securities, it is at their own Peril. Pre. Cb. 273. Rep. Eg. 10. MSS. Ca. in Chan. Terry ver. Terry.

19 34 5 - 1 30 TAC

11 5 1939 h: TALLES

r:

d

re 11

THE RADIO HE REPORT AND AND AND Percent of the mile to write County

Charles and the property of the contract of th

SIGNATURE LINEY

### Of Paupers.

IT often happens that some Persons may have a Right to an Estate, yet not where with to prosecute the same, or else may be prosecuted, or made Parties to a Suit, as knowing much therein, yet have not where with to make either a Desence or Discovery; in such Cases this Court (which delights in Justice and Mercy) will admit such poor Persons either to sue or desend in Forms Pauperis.

But here it is necessary to observe, that there are many *Paupers* who bring only vexatious Suits; who being detected, and the Court informed thereof, they shall not

only be dismist, but punished.

The Method of obtaining such Admission is first for the Party to make an Affidavit before a Master, that he is not worth in all the World the Sum of five Pounds, his just Delts being first paid, and his wearing Apparel and the Matters in Question only excepted; and then to draw a Petition to the Master of the Rolls, praying to be admitted in Forma Pauperis, and to have Counsel, and a Six Clerk assigned him, naming whom in the Petition.

t

But when the Plaintiff petitions, he must at the Bottom of his Petition (which differ from the Form of a Defendant's Petition, being special according to the Circumstances of the Case) have a Certificate under Counfel's Hand, signed at the Bottom of the Petition, signifying that he has just Cause of Suit; and altho' the Bill be filed, he must have a special Petition, shortly stating the Merits of his Cause, and Counsel's Certificate to be admitted. But if a Pauper Defendant petitions, he only draws a very short Petition to be admitted to defend the said Suit in Forma Pauperis, and praying that Counsel and a Six Clerk may be assigned him; and there is no Occasion for any Certificate.

This being done, and the Affidavit annexed to the Petition, he presents the same; and if there appears no Cause against it, the Master of the Rolls underwrites an Order for the Petitioner's Admission, according to

the Prayer of his Petition.

2.

its

10

714

at

Y

nd

ot

vit

all

jul

10-

Ma-

and

n in

nult

fen

ion, nces

fel's

And after Admittance no Fee, Profit or Reward (except Pauper Fees) is to be taken of the Pauper by any Counsel or Attorney for the Dispatch of Business, whilst it depends in Court, and he continues in Forma Pauperis: Nor shall any Contract or Agreement be made for any Recompence or Reward afterwards. And if any Person offending herein shall be discovered unto the Court, he shall undergo the Displeasure of the Court, and fuch farther Punishment as the Court shall think fit to inflict: And if any Pauper offend herein, he shall be difpaupered, and never again be admitted in the same Suit in Forma Pauperis. Vide Ord. Chan. 152.

But although the Clerks take no Fees, strictly so called, of a Pauper, yet they may make him pay for the Labour of

Writing

Of Persons faboured in Equity.

Writing, which is after the Rate of two

Pence per Sheet.

And if it be made appear to the Court, that any Pauper has fold or contracted for the Benefit of his Suit, or any Part thereof, while the same is depending, such Cause shall be thenceforth wholly dismiss'd, and

never again retain'd.

Formerly no Process of Contempt at a Pauper's Suit was to be sent to be sealed, until signed by the Six Clerk, who was to take Care it should not be vexatious or needless: But this is now altogether disused. But the Order of Admission is usually produced in the Office, where the Pauper has

Occasion to pass.

And as a Party may be admitted in Forma Pauperis at any Time during the Suit, fo may he be dispauper'd at any Time, upon its being made appear to the Court, that he is of such Ability, that he ought not to be in Forma Pauperis. And in a Case of this Nature where it was shewed to the Court, that a Pauper was in Possession, and received the Rents of the Lands in Question, the Court ordered him to be dispauper'd; though the Desendant had a Verdict at Law, and might thereupon take a Writ of Possession, &c.

Both Plaintiff and Defendant may be admitted in Forma Pauperis in the same Cause: But this hath been complained of as an Abuse; for that it tends much to the Disquiet of the Court, and incourages the Parties to be vexatious. Yet where 'tis a Matter of Contest, and the Matter seems dubious, the Court will admit both

Plain-

Plaintiff and Defendant to fue and defend in Forma Pauperis.

And if a Cause goes against a Pauper, he shall not pay Costs to the Defendant; but he may be punished Personally, as the Court shall think fit: Yet such Punishment is very feldom inflicted.

Lecriments no Process of Contemps, as a Pay as Suit was to be leng to be walch, Dated legend Lythe Six Clerk, who was to taggs are it should be a de vexation and a leadletter state that it areas at occulier I defined Bur the Order of Adamsion is unually produced anche Office, where, the Parter has

executed a Party over by admitted at Art. have sent the service of the service

in bear midt sount to the Court, that

the Minee when it was flicked to the early for the early form that a size of the line is and a control of the early of the line is a flick in the early of the ea

on, the Court ordered him to take the to the first of the tree of

anguers to higher bar well on Pib

new meanineram w

C H A P.

19 millionati to 1917

# CHAP. IV.

and the second meanth of the small second

# Of Bills.

HAVING before flewn what is an Orlinginal and an Injunction Bill, proceed we now to confider other Bills made use of in this Court, viz. Amended Bills, Supplemental Bills, Cross-Bills, Bills of Interpleader, Certiorari Bills, Bills to perpetuate Testimony of Witnesses, Bills of Revivor, Bills of Review, and Bills Original after Decrea

(

t

p

to

n

ta

in

de

tif

fil

his

Ot

mı

Or

be

lica

up

Bu

on,

be

### Amended Bills.

N Amended Bill is but esteemed a Continuation of the Original Bill, and they two reckon'd but as one. And where any Alteration is made in a Bill before the Caule is at Iffue, this is called an Amended Bill, and obtained by Order of the Court: Andif you require an Answer to the Amendments, 'tis on Payment of twenty Shillings Cofts; But where new Matter happens pending the Suit, and after Replication, or that the Caule is at Issue, which Matter is necessary for the Plaintiffs to set forth to the Court, this cannot be done by Way of Amendment; but fuch new Matter being discovered, you se it forth by a Supplemental Bill, which you draw and file of Course; without any Order for that Purpose.

A Bill may be amended where there are not proper Parties. 3 Chan. Rep. 92. And if any Overfight in a Bill is discovered, which require

requires an Admendment before an Answer, the Plaintiff may, upon Motion or Petition, either amend or difmiss his Bill; but if the Defendant has appeared, and taken a Copy of the Bill, the Bill cannot be difmis'd without Payment of Costs to be tax'd. And after an Appearance, if before Answer, the Plaintiff may also, upon the like Application, amend without Costs, amending the Defendant's Copy; and this is no more than an Order of Course. But if the Plaintiff wants to amend his Bill after the Defendant hath put in his Answer, and he requires an Answer. to the Amendments, he must, by his Counfel, either move the Court, or petition to amend the same on Payment of twenty Shillings Costs to the Defendant, which he must take Care to pay before he proceeds, otherwife he will be guilty of Irregularity; and in this Case the Defendant must be served, de nove, and proceeded against as in the Case of an Answer to an Original Bill.

1

٠

iy fe

11,

if

ts,

s;

be

16

be

10-

out

fet

701

Or-

are

d if

ich

ires

If a Demurrer is put in upon a Slip or Mistake (or otherwise) in the Bill, the Plaintist may immediately, after the Demurrer is filed, obtain an Order, on paying the Defendant's Clerk twenty Shillings Costs, to amend his Bill. But if the Defendant obtains an Order for arguing the Demurrer, the Plaintist must also pay the Charge of obtaining such Order, and also the twenty Shillings Costs,

before he can amend his Bill.

'Tis faid that the Court, even after Publication, and any Time before Hearing, will, upon Cause shewn, suffer Parties to be added. But if a Defendant be added after Publication, the Cause, as to such Defendant, must be heard upon Bill and Answer only.

A Bill

A Bill may be amended (by Order) by adding feveral Tenants of a Manor, in order to establish a Custom. Nel. Chan. Rep. 114.

A Conveyance fet forth in a Bill without Date, amended by Order. Vide Nel. Chan. Rep. 260.

### Supplemental Bills.

Supplemental Bills are brought upon Difcovery of any new Matters fince the Original Bill and Answer, and other Proceeding had in the Cause, in order to supply the Deseas of some former Proceedings, when it is too late to amend the same.

Where new Matter happens pending the Suit, and before or after Replication, which Matter is necessary to be set forth to the Court, it cannot be done by Way of Amendment; but you may of Course file a Supplemental Bill; which must be a distinct Bill, reciting briefly the former Proceedings, and then the new Matter.

Where a Supplemental Bill may be exhibited for Discovery of more Evidence, vide 2 Chan. Rep. 142. Boeve and Skipwith.

Where a Supplemental Bill will lie, containing new Matter, which the Party has discovered since the former Decree; and at the same Time a Petition of Rehearing in Nature of a Bill of Review, praying that the former Decree may be rectified in the Particular complained of by the Bill. Barnard. 468.

In a Bill of Review a new Supplemental Bill may be added. Hill. 1682. Price and

Keyte, 1 Vern. 135.

3 6

Bi

Bi

A

pa

the

ng

bec

orn

cati

Wi

Xai

1

у,

s if

Bi

On a Supplemental Bill the Court, upon Motion, will give leave to add to the first Interrogatories, so as the new Interrogatories contain nothing but what relates to the

Supplement. Ord. Chan. 126.

Or, I think, you may file a Replication to the Defendant's Answer to the Plaintiff's Supplemental Bill, and obtain an Order that Service of a Subpana to rejoin ret. immediate on the Defendant's Clerk in Court, may be deemed good Service on the Defendant; and then draw Interrogatories to examine your Witnesses touching such new Matters contained in your Supplemental Bill, in Case the Desendant has denied the same in his Answer.

## Crofs-Bills.

A Cross-Bill is a Bill brought by the Defendant against the Plaintiff in a former Bill depending, touching the Matter of such Bill, or the Facts set forth in the Defendant's Answer to the Plaintiff's Original Bill.

1

,

e

1

25

at

in

at

he

27-

tal

nd

On

It must be brought before Publication is pass'd on such first Bill, and not after, except the Plaintiff in the Cross-Bill will go to Hearing upon the Depositions already published, because of the Danger of Perjury and Subprnation, if the Parties should, after Publication of the former Depositions, examine Witnesses de novo to the same Matter before examined unto. Vide Nel. Chan. Rep. 103.

If a Bill is exhibited in one Court of Equiy, there may be a Cross-Bill in another; sif the Mortgagor exhibits a Bill to redeem n the Exchequer, the Defendant may bring Bill in Chancery to foreclose: Per North,

Lord

Lord Keeper, 1 Vern. 221. But I most hum. bly conceive that this is not adviseable to be done.

When a Cross-Bill is put in, both Cause commonly proceed to be heard together, which cannot be if one Bill be filed after Publication in the other Cause; unless such last Cause is heard on Bill and Answer. But if there be cross Causes, and Publication is past in both, and one of the Plaintiss omits to serve Subpana's to hear Judgment, his Cause shall not come on at the same Time with the other, except the other Par.

ty confents.

Where there are Cross-Bills, the Defendant in the first Bill must generally answer, before he in the last shall be compell'd to put in his Answer: And by the Course of the Court the Plaintiff in the last Bill cannot have Process of Contempt against the other till eight Days after his own Answer is put in. And in Case the Plaintiff in the last Bill should attempt to make out Process of Contempt, the Defendant may obtain an Order that he may have a Week or Fortnights Time to put in his Answer to the Cross-Bill after the Defendant has put in his Answer to the Plaintiff's Original Bill.

in

fi

lie

th

da

R

ma

ma

ties

tha

wh long

ders gain

both

then

nd

may

But

terpl

# Bills of Interpleader.

A Bill of Interpleader is generally a Bill exhibited by a third Person, who not knowing to whom he ought of Right to render a Debt or Duty, or pay his Rent, feat he may be hurt by some of the Claimantia and therefore prays that they may interplead

fo that the Court may judge to whom the Thing belongs, and he thereby rendered fafe on the Payment: And this he may do, whether any Suits be actually commenced against him in Law or Equity, or is only in Danger of being sued or molested by the Parties. But to this Bill he must annex an Affidavit that he does not exhibit it by Fraud or Collusion with all or either of the Defendants, or of any other Person or Persons, but only to be indemnissed, and to pay his Rent or Debt safely to such Person to whom this Court shall order or adjudge the same to

belong.

x

at at

de nt's

11

Vd

Bill

o not

ren

feats

iants;

Sometimes a Bill of Interpleader is, where one who is not Party in the first Cause, supposes he has separate Interest in the Matter in Question, and brings his Bill against the first or other Defendant, praying to be relieved according to his Right: Whereupon the first Plaintiff makes the second a Defendant, in order to interplead and contest the Right: or, if the first Plaintiff does not make him a Defendant, then the Defendant may exhibit his Bill against all the other Parties, and pray that they may interplead, and that the Court may order and decree to which of them the Thing in Demand beongs, and further as his Case requires. Or, If there be no Suit here between the Pretenders, he, who has Suits at Law brought against him, or is in Danger of Trouble from both the Claimants, may file his Bill against them, and pray that they may interplead; and that the Proceeding at Law against him may be stay'd 'till the Right be determin'd: But the Plaintiff who brings fuch Bill of Interpleader commonly offers by his Bill to pay pay the Money or Rent into Court, for the Benefit of such Party to whom the Court shall adjudge the same to belong: And in Case he does not make such Offer, the Court upon Application of either of the Desendants, will order such Plaintiff to pay the Money or Rent into Court, or the Bank of England, for the Benefit of such Party to whom the Court, at the Hearing of that Cause, shall decree the same.

To a Bill of this Nature, the Plaintiff must annex an Affidavit, that there is no Collusion between him and any of the Par-

ties, &c. as before.

If a Cause has been heard upon a Bill of Interpleader, and a Trial at Law directed to settle the Right between the Defendants, there is an End of the Suit, as to the Plaintiff; so that if he afterwards dies, the Cause shall still proceed, and there needs no Revivor, each Defendant being in the Nature of a Plaintiff. Ruled upon Motion. 1 Vern. 351,

#### Certiorari Bills.

A Certiorari Bill in this Court, is such whereby a special Writ of Certiorari is prayed, for removing a Cause from an Inferior Court of Equity, upon Suggestion that the Cause is out of the Jurisdiction of such Court; or that the Witnesses, or the Defendants live out of its Jurisdiction; or upon some good Reasons given why equal Justice may not be had in such Court. So that a Certiorari Bill has something of the Nature of an Injunction Bill, as to the Jurisdiction of inferior Courts.

A Cer-

lic

VE

Si

W Lo red

req

Co

wit

and

Bor

tred

gifte

bited

Cert

Sugg

the I

fail t

A Certiorari Bill was brought to remove a Cause out of the Mayor's Court, his Witnesses living out of that Jurisdiction; and inserted other Matters relating to an Account not in Controversy in the Mayor's Court. After Examination of Witnesses, the Defendant moved for a Procedendo; and insisted, that if the Cause should be heard here, he could not be relieved, not having any Bill here; but a Procedendo was denied, the Bill containing other Matters not determinable in the Mayor's Court; neither can the Bill be divided: But the Cause, after Hearing, was dismiss'd out of this Court. Mich. 15 Car. 2. Rich and Jaquis, 1 Chan. Ca. 31.

This Court may either send the Cause back, or retain it: It has been done both Ways, sometimes retained and decreed here, but oftner sent back; sometimes after Publication, and sometimes after a Subpana served to hear Judgment. Vide 2 Vern. 491.

of

I,

too

rati

In-

tion

n of

the

; of

qual

So the

e Ju-

Cer-

Upon Motion, and a Certificate from the Six Clerk that the Bill is filed, the Certiorari Writ prayed thereby will be granted by the Lord Chancellor; and it is commonly directed to the Judge of the Inferior Court, requiring him to certify, or fend to this Court, the Tenor of the Bill or Plaint there, with the Process and Proceedings thereon; and upon or before Receipt of the Writ, a Bond to the Master of the Rolls is to be entred into by the Plaintiff here before the Regifter, with Condition, that the Bill exhibited contains Matter sufficient to bear a Certiorari, and that the Plaintiff prove the Suggestion of his Bill in fourteen Days after he Return of the Writ; and if the Plaintiff ail to make his Proofs within the Time, a

Procedendo may be awarded by the Chancery to the Inferior Court, unless the Plaintiff obtain an Order for farther Time, on Affidavit of the Remoteness of his Witnesses,

or other good Caufe.

Not the Plaintiff, but only the Defendant in an Inferior Court of Equity, may remove the Proceedings hither by Certiorari. tho' fuch Defendant, who is Plaintiff in this Court, is to examine within fourteen Days after the Writ is returned, as to his proving the Surmifes or Suggestions of his Bill; and giving the Court Jurisdiction; yet the other Side is not to examine to, or publish any Thing against it: But after the Plaintiff's first Examination to prove his Suggestions as to the Jurisdiction, if the Court retain the Cause, both Parties are to ext mine their Witnesses orderly, touching the Merits; and to have Publication passed in the ordinary Courfe.

# Bill to perpetuate Testimony of Witnesses.

THIS Bill must shew a Title to the Thing whereto the Testimony relates; and on Assidavit that the Witnesses to prove it are old, insirm, sick, and not like to live long; or that they are going to Sea, or beyond Seas, whereby the Party is in Danger of lossing their Testimony, &c. and therefore the Plaintiss, on such Assidavit, may obtain an Order to examine them; (and if necessary, a Commission for that Purpose) and a Subpana is to be served on all the Parties interested to shew Cause, if they can, to the contrary.

ag

B

th

fir

ve bo In a Bill for this Purpose, if the Plaintiff prays Relief, the Bill shall be dismissed.

2 Vent. 366.

1

ng

are

10-

1 20

ary,

bpa-

relt-

con-

In

After the Bill is filed, the Court, on Affidavit that the faid Witnesses are old, infirm, going beyond Sea, &c. if they are in the Country, will, on Motion or Petition, grant a Commission according to the Prayer of the Bill; or if they are within ten Miles of London, will order them to be examined in Court de bene esse. But more of this hereaster, under Examination of Witnesses.

### Bills of Revivor.

BILLS of Revivor are to revive Suits, and all Proceedings thereon abated.

When any of the Parties to a Bill die, or if a Feme Plaintiff marries, regularly the Suit abates; but with Respect to an Abatement by the Death of Parties, it must be by the Death of such as were so far materially concerned in Interest, as to make it necessary to have their Representatives before the Court, before the Cause can be finally determined.

If a Defendant dies the Suit is abated; and if it is a personal Demand against him, the Bill must be to Revive and answer against the Representative of such Defen-

dant, and the Subpana accordingly.

Where the Testator had pleaded to a Bill, and died before the Plea was argued, the Executor may plead de novo: For the first cannot be argued now. Micklethwaite ver. Calverly and Baker, Cases Temp. Talbot 3.

T 3

The

The Plaintiff, his Heirs, Executors of Administrators, who have the Right of Suit by Privity of Blood, or Representation, may exhibit this Bill against the other Party, his Heirs, &c. especially where the original Defendant has put in a full Answer to the Plaintiff's original Bill; unless the Bill of Revivor prays a Discovery of the Assets of the original Defendant, or some other Matter proper to be answered by the Desendant to such Bill of Revivor.

No Answer is commonly necessary to this Bill; but the Defendant may for his own Benefit, (altho' no Answer is required by the Bill of Revivor) by way of Answer or Plea, fet forth and shew Cause against the Revivor; as that the present Plaintiff is not Heir, &c. That he standeth not in the like Case, nor hath the like Interest, &c. as in

the former Suit.

This Bill must pursue the first Bill; and in Case of any material Difference between them, the Defendant may demur, and the Bill be dismiss'd: But if there be any new Matter arising by the Abatement, as Asses in any Heir's, or Executor's Hands, the Bill of Revivor may 'pray a Discovery, and a Subpana to revive and answer, in which Case the Defendant must answer thereto.

If an Executor or Administrator on a Bill of Revivor, by Answer, admits Assets, and the Plaintiff, upon coming in of such Answer, revives his Suit (which is always done of Course, by Order of Court) and proceeds in the original Cause upon the Revivor, he must not afterwards refer the Answer for Insufficiency.

A Bill

tl

ba

no

w

fo

ca

fee

he

rei

wh

wa

pro

the

she

Ad

bar

all

to

cafi

the

1

Ad

fen

her

of 1

and

a M

ferv

Ma

Har

for

A Bill is brought against a Man and his Wise, where the Matter wholly concerned the Wise; they both answer, and the Husband dies: Here a Bill of Revivor may be brought against the Woman, for she shall not be obliged to abide by that Answer which she, together with her Husband, or solely as his Wise, hath sormerly made; because shewas then under Coverture, and confequently under the Awe and Instuence of her Husband: But if the Matter in Question remain in Statu quo, it is in her Election, whether she will abide by that Answer or not.

Where a Feme Sole answers, and afterwards pendente lite marries, the Plaintiff may proceed against her without reviving, and the Husband shall be bound by the Answer she made whilst sole; for she shall not take Advantage by her own Act: But the Husband, in that Case, is a Party of Course in all the Proceedings in the Cause subsequent to his Wife's Answer: And there is no Occasion for a Motion for an Order to make the Husband a Party.

But if a Feme Plaintiff marries, by her own Act she abates the Suit, of which the Defendant may take Advantage; and she and her Husband must therefore exhibit a Bill of Revivor, and serve a Subpana to revive, and the Time for answering being out, it is a Motion of Course to revive Proceedings, &c.

The Death of a material Party, as I obferved before, abates the Suit: So does the Marriage of a Feme Plaintiff. 18 Car. 2. Hambden and Brewer, 1 Chan. Ca. 77.

The Death of the Wife, when they sue for what they have a joint Right to, shall not

not abate the Suit. Cary 81. for the whole Interest survived to the Husband.

So if the Husband and Wife sue in the Wife's Right, and pending the Suit, the Husband dies, yet the Wife may proceed.

3 Chan. Rep. 40. But otherwise, if the Suit had been concerning the Wife's Inheritance.

Mich. 1691. Shelberry and Briggs, 2 Vern.

249. By the Death of one Jointenant the Suit does not abate. 3 Chan. Rep. 66. Seens of Tenants in Common, for a Right descends to their Representatives.

The Plaintiff's Death, after a Bill of Interpleader, abates not the Suit. Ruled on

Motion. 1 Vern. 351.

Though by the Death of the Ceftui que Trust, the Suit abates as to him; yet if there be a Decree against him, and his Trustees to convey, &c. the Trustees are obliged to convey, for the Death of either Party makes an Abatement only quoad himself.

If some of the Plaintiffs refuse to join in bringing a Bill of Revivor, the others may bring such Bill, and make those who resuled Defendants. And a Defendant may bring a Bill of Revivor, as well as a Plaintiff.

me

cia

ro

ed

pof

viv

the

viv

thr

Bil

De

Wit

1

The Court will order Money out of Count to a Person intitled by a Decree, notwithstanding the Death of some of the Partic. Mich. 1727. between Finch and Lord Wingebelsea.

A Devisee cannot revive for want of Pri-

vity admitted. I Chan. Ca. 174.

An Affignee may by Scire Facias; Dum and Allen, I Vern. 283. fed vid. I Vern. 426. S, C. Whether he may for want of Privity, quære, but he may bring a Bill of Revivor.

In an Original Bill to supply the Want

of Privity, the Party shall have the same Advantage as if it was a Bill of Revivor. Clare and Wordale, Pasch. 1706. 2 Vern. 548. A Bill of Revivor may be brought against a Devisee. Minshall and Lord Mobun, 2 Vern. 672.—In a mutual Account, the Defendant as well as Plaintiff may revive. Stowel and Cole; vide antea, Mich. 1727. Finch and Lord Winchelsea. That the Defendant in any Case may revive, as well as the Plaintiff, [after a Cause is beard and a Decree pronounced] and if there are several Plaintiffs who refuse to join in reviving the Suit, they may be made Defendants.

If an Administrator obtains a Decree, but dies before Involment, the Administrator de bonis non may revive this Decree within the Equity of the \* Statute 30 Car. 2. c. 6. Owen \* It is enact-

and Curfon, 2 Vern. 237.

.

6.

)f.

nt of

\* It is enacted, that an Administrator

de bonis non, may fue a Scire Facias, and take Execution upon a Judgment had in the Name of an Executor or Administrator.

I think, to revive a Decree by Scire Facias is, where the Decree is figned and inrolled; and where 'tis not figned and inrolled, a Bill of Revivor must be brought, vide post a, b.

A Creditor admitted to come in may revive. Trin. 1702. Pitt and The Creditors of the Duke of Richmond. If the Plaintiff revives against two only, when there were three Defendants to the Original Suit, his Bill will be dismiss'd. Cary 78. Quare.

But it is unnecessary to revive against a Desendant who never answered. I Vern. 308,

Plaintiff may proceed against the Husband without reviving against the Administratrix

of the Wife. Jackson and Rawlins, Mich. 1690. 2 Vern. 195.

The Heir or Executor of the Party dying may revive. Ferrars and Cherry, Mich. 1701.

If the Suit abates, the Plaintiff may bring either an Original Bill, praying that a parallel Decree may be made, or a Bill of Revivor, which revives all the Proceedings had therein before the Decree is figned and inrolled; but if after, it ought regularly to be revived by Scire Facias. Vide infra 2 Chan. Rep. 67.

After a Decree to account, and Abatement of the Suit by the Defendant's Death, his Representative may revive. Kent and

Kent, Preced. in Chan. 197.

A Bill of Revivor upon a Bill of Revivor lies until the Interest of the Thing in Question be determined. Mich. 13 Car. 2. Hard. 201. Agreed per Curiam, especially in Case of Death.

If one be named a Defendant in the Original Bill, who is yet alive, he ought not to be named in the Bill of Revivor, for the Suit never abated quoad him. Hard. 201. But of named in the Bill of Revivor only, he may be named in every Bill of Revivor after, because he was not pamed a Defendant in the Original Bill. Mich. 13 Car. 2.

After a Decree figned and inrolled, the Suit is regularly to be revived by Scire Facias. Sed vide 2 Chan. Rep. 67. Though in Case of a Decree inrolled, a Revivor by a Bill hath been allowed good. 1 Chan. Ca. 37.

After a Bill to redeem, and a Cross-Bill, &c. decreed, a Bill of Revivor and Supplemental Bill. Birch. Vide Gilb. 186.

A Bill

h

h

on

in

fty

u

Se

A Bill of Revivor lieth not upon a Decree of a long Standing; but the Party is to exhibit an Original Bill. Also a Bill of Revivor lies not to revive a Decree made for Costs only. 1 Chan. Ca. 2 Chan. Rep. 195. But 2 if a Bill of Revivor will not lie upon a Decree of a long Standing, in Case either the Plaintiff or Desendant be living.

After a Cause has slept twelve Months, here must be a Subpana ad faciend' Attornat, Vern. 172. [See hereaster Of reviving De-

rees.]

n

•

0

t

of

17

.

90

as.

Bill

ill,

p-

Bill

### Bills of Review.

A Bill of Review is after a Cause is heard, and the Decree signed, complaining of ome Error in Law, or Mistake appearing the Body of the Decree; or when some ew Matter is discovered that was not dispovered at the Time of making the Decree. For exhibiting of this Bill, you must obtain an Order, either on Motion or Petition, the Chancellor (though commonly on etition) which is generally on depositing sty Pounds with the Register. And there use an Affidavit annext to the Petition, See more hereafter.]

## Bills Original after Decrees.

N Original Bill may be brought to execute or confirm a Decree; or to caran Act of Parliament into Execution, or revive or inforce the Performance of Deees. A Decree has been explained by Orinal Bill, upon a Matter subsequent to the Decree; Decree; but may not be explained on a Matter precedent to it. And this Bill lies to put a Period to a temporary Decree, &c. After a Decree for Enjoyment of Lands, a fecond Bill may be exhibited for the mean Profits, and for farther Assurance, &c.

A Feme Covert, after Separation from her Husband, had a Decree for Alimony, which Decree was confirmed on a Bill of Review; but the Husband being willing to be reconciled to his Wife, and to cohabit with her, exhibited an Original Bill to fet afide the Decree; and it was held by Finch, Lord Keeper, affifted by North, Chief Justice, to be a proper Bill. I Chan. Ca. 250. Whereit is faid to have been resolved, that where I Decree is temporary, or for special Ends, an Original Bill lies, to shew that the Purpose of the Decree are satisfied, and to put a seriod to it. Vide 2 Chan. Rep. 128.

An Original Bill to execute a Decree of Lands against a Purchaser, who claimed under Parties bound by that Decree, has been allowed good on a Demurrer put in by the

Defendant. 1 Chan. Ca. 231.

If a Bill be brought to have the Benefit of a former Decree, the Plaintiff cannot examine Witnesses, much less the same Witnesses the Matters in issue in the former Cause; but on such a Bill the Court may examine the Justice of the former Decree; but then it must be by Proofs taken in the Cause where in that Decree is made. Per Cur' 2 Vern. 209. Vide 1 Chan. Ca. 45. where it is said, that no Original Bill ought to be brought to explain a Decree, on any Matter precedent to the Decree.

A Decret

A Decree cannot be fet aside by an original Bill, unless in Case of apparent Fraud.

Cases Temp. Talbot 301.

in

it o

1

to

ret

An original Bill, barely in Nature of a Bill of Revivor, to revive or inforce former Proceedings, and not more comprehensive than a Bill of Revivor only, does not open the first Decree to have it look'd into; but if it be to inforce a Decree, or carry it farther, then it opens the Cause. Pasch. 1706. Vare and Wordall.

Vide the feveral Forms postea.

CHAP.

#### CHAP. V.

Of the Method of filing Bills; and of Subpoena's and other Processes to inforce Appearances; with some Observations on Contempts in General.

pi

th

T

Ki

C. fes

cor

fta

app Da foe

tho

**o**bj

ceiv der

no dre

Wit

of-

thus

G.

A FTER the Bill is Drawn, Ingros'd, &c. according to the Instructions before given, it is to be carried to a Clerk in Court to be filed; who first enters it in his Cause-Book, and then in the General Bill-Book, at the West End of the Office, after which he marks it at the Top with the Day of the Month and Year, and subscribes his Name at the Bottom on the Left Side, and then delivers it to his Six Clerk, if in his Study, to be filed; but if the Six Clerk be absent, he put it over his Study Door, and the Six Clerk, having entered it also in his Book, files it.

This being done, the Clerk in Courtor Solicitor makes out a Subpana Note, thus;

subpana C. D. Gent. to appear in Chancel set.—at the Suit of A. B. Esq;

And he must put his Name at the Bottom of the Note.

This being entered in his Subpana Book, is to be carried to the Subpana Office with 4s. if but one or two Defendants Names, but if three Defendants Names, you pay 4th 6d. upon which they make out the Subpana, and get it fealed, after which it is left at the Clerk in Court's Seat by the Bag-bearer of the Office; or if bespoke by the Solicitor, it remains

of Processes and Proceedings, &c. remains in the Office for him to fend for or fetch it.

Note; A Man and his Wife are reckoned but one Defendant in a Subpana, and no more than three Defendants can be put into

one Subpana.

1

,

J.

10

of

it

A Subpana is a Writ by which Persons are called or subpanaed into Chancery to answer a Bill, where the Common Law hath provided no ordinary Remedy: And it is the first and leading Process of this Court. The Form of it is thus:

## Form of a Subpoena to answer.

EORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Fatth, &c. To A. B. C. D. and E. F. Greeting. For certain Causes offered before us in our Chancery, We command and strictly injoin you that, laying all other Matters aside, and notwithstanding any other Excuse, you personally appear before us in our faid Chancery the— Day of-Instant [or next ensuing] wherefoever it shall then be, to answer concerning those Things which shall be then and there objected to you, and to do farther and receive what our faid Court shall have considered in this Behalf; and this you may in no wife omit under the Penalty of one hundred Pounds; And have there this Writ. Witness Ourself at Westminster the \_\_\_ Day of—in the—Year of our Reign.

Note; The Indorsement on the Writ is thus; By the Court, to answer at the Suit of G. K.

## Di Processes and Proceedings

To each of these Subpana's containing more Names than two, there are two Labels or small Slips of Parchment, containing all the Defendants, and the Plaintiff's Name. and the Day of Appearance, &c. And there cannot be above three Defendants Names in one Subpana. But as Husband and Wife are accounted but as one Person, so their Name are also accounted but as one. You must take Care, or rather the Officer of the Sub. pæna Office, who makes out the Subpana ought to take great Care, that there be no Mistake in the Body of the Subpana; for if there is, and any of the Defendants find it, he may take Advantage of it, and refuse to appear to the Plaintiff's Bill; and if profecuted for want of an Appearance, he may refer the Service of the Subpana for Irregularity and obtain Cofts; and the Officer of the Subpana Office who made out the Sulpana is in Strictness liable to pay those Coff

Lon

But

s al

F

mm

A

f t

Præ

he f

TO

her

ned.

W

Day

hat he I Lond a an

A Subpana to answer is returnable immediatè, when the Defendant lives in Town of within ten Miles, and on an Affidavit made and filed thereof, you may either petitionor move for an Order for a Subpæna returnable immediately against the Defendant, and the carry your Order and Pracipe for a Subpant ret. immediate to the Subpana Office for fud Subpæna to be made out: But these Subpona's are feldom made out but in Vacation Time; for in Term-Time 'tis needless to have it returnable immediate, for it may be

returnable any Day in Term.

If the Defendant lives in London, the Affidavit is thus:

> Between A. B. Plaintiff, C. D. Defendant.

A.B. the Plaintiff in this Cause maketh Oath, that the Defendant C.D. lives in Friday-Street (or other Place) in the City of London.

A. B.

d

11

d

10

100

to

14

Sworn, &c.

But if the Defendant lives near London, then the Affidavit is thus:

A. B. &c. maketh Oath, that the Defendant C. D. lives at, &c. which faid Place about—Miles distant from London.

For a Petition for a Subpana returnable mmediately, vide Petitions.

And where there are many Plaintiffs, all of them need not be named either in the Pracipe or Writ, but only say, at the Suit of the first Plaintiff and others; or if there be two Plaintiffs, say the first Plaintiff and another: But all the Defendants are to be named.

When a Subpana is returnable on the last Day of the Term, and the Subpana served hat Day before the rising of the Court, if he Desendant lives 20 Miles or more from London, he has eight Days after to appear a and no more; and if served in London or Within within ten Miles thereof, he has but four Days to appear in; and a Defendant living twenty Miles off may have a Commission to take his Answer in the Country, returnable the first Return of the next Term; but living in London he has eight Days exclusive from the Day of his Appearance to answer.

Upon a Subpana returnable immediate the Party is bound to appear in four Days after Service of the Subpana, and if he does not answer in eight Days after Appearance, then an Attachment may immediately after be made out against him. And here it may not be amiss to observe, that there must be fifteen Days between the Teste and Return of every Process of Contempt after the Subpana; that is where the Defendant cannot be arrested on such Process; for where you arrest the Defendant on such Process, you may make that Process returnable when and as soon as you think sit.

A Subpana may be made returnable and ferved the same Day on which 'tis sealed; but it must be served before the Court rise, otherwise it is not good Service, and the Defendant is not bound to appear thereto.

When the Business is done at a General Seal, you pay as aforesaid; but if it be at a private Seal, which in Cases of great Importance may be necessary) you pay two Guineas for opening the Seal, over and about the Fees of the Writ; but you pay no more than 3 s. 6 d. extraordinary for Sealing every Common Writ, where a private Seal is obtained on any extraordinary Occasion for sealing a Commission of Bankruptcy, of the like.

midnia

o make I mi borred it bas : grow on Thi

te

ly

al

m

da

H

M

w

dy

The

La

G.

last

Subp

this Bod To inforce Appearantes, &c.

This Writ is to be ferved before the Return thereof, either by delivering the Writ itself under Seal to the Defendant, or by flewing him the fame under Seal and delivering him the Label thereof. And when there are more Persons than one in the Subpana, 'tis usual to have a Label, which is always personally served on the first of the Defendants you can meet with, and the Body under Seal shewn to him: And if there be three Defendants, you have two Labels to your Subpana, and the next Defendant you can meet with, you must also personally serve with the other of the Labels, and also shew him the Body under Seal; and then the Body of the Subpana under Seal may either be delivered to the last Defendant, or it may be left at his Dwelling House with one of his Family, or with the Mafter or Miftress or Servant of the House where the Defendant lodges. And the Body of the Writ under Seal must always be thewn to fuch Defendants as are ferved with Labels.

Affidavit of serving a Subpoena to ap-

1

1

ne

ral ta mwo

ore

dig

for

of

bi

Between A. B. Plaintiff, C. D. Defendant.

G. H. of, &c. maketh Oath, that this Deponent did on the—Day of——last past, serve the Desendant C. D. with a Subparta, issuing out of and under Seal of this Honourable Court, by delivering the Body of the said Subparta under Seal, as U 2 afore-

Tho' the Place be left out, the Affidavit will be good.

of Processes and Proceedings aforesaid, unto L. the Wife of the said Defendant C. D. at \* his the said C. D.'s House or usual Place of Abode, situate in Fleet-Street, London, by which said Subpana the said Defendant C. D. was commanded to appear in this Honourable Court the—Day of—at the Suit of the above-named Plaintiff, as appeared unto this Deponent by the Label of the said Subpana.

G. H.

Sworn, &c.

92

bi

Se

fer

faid

Dw

Wit

he v

by were

Cou

the !

Affidavit of serving a Subpæna on the Day of Return.

Between A. B. Plaintiff, C. D. Defendant.

G. H. of, &c. maketh Oath, that he this Deponent did, about the Hour of ten of the Clock in the Forenoon of the ——Day of——perfonally, ferve the Defendant C. D. with a Subpana, iffuing out of and under Seal of this Honourable Court, by leaving the Body of the said Subpana with the said Defendant C. D. under Seal as afore-said; by which said Subpana, &c. (as in the former.)

adesis apla, Herry V. J. Lills

to key who sole or last

wherein and our of and finites Seel of thousander Court, by delivers the trousander Lad Majawa enter Seal ye

As your -- - and man his arbindred him

Where Descondant of Where

Where several Defendants who are inserted in one Subpana are served, the Affidavit is thus:

Between A. B. Plaintiff, C. D. E. F. and G. H. Defendants.

1 B. of, &c. maketh Oath, that he this Deponent did on, &c. personally serve the Defendant C. D. with a Subpæna iffuing out of and under Seal of this Honourable Court, by delivering unto the faid Defendant a Label of the faid Subpana, and this Deponent did at the same Time thew unto the faid Defendant the Body of the faid Subpana, fo under Seal as aforefaid; and this Deponent did also on the same Day deliver another Label of the faid Subpana to the Defendant E. F. and at the fame Time shewed him the Body of the faid Subpana fo under Seal as aforesaid; and this Deponent farther faith, that he did on the -- Day offerve the other Defendant G. H. with the faid Subpana by leaving the Body of the faid Subpana so under Seal as aforesaid, at the Dwelling-House of the faid Defendant G. H. with a Person who informed this Deponent he was a Servant to the faid Defendant G. H. by which faid Subpana the faid Defendants were directed to appear in this Honourable Court the Day of at the Suit of the faid A. B. as appeared to this Deponent by the Label of the faid Subpana.

A. B.

a

al

C.

ere

Sworn, &c.

It has been held good Service (if a Person keeps the Door of his House shur, and refuses to open it) to leave the Writ under Seal hanging upon the Door of the House, or to put it into the House under the Door, or within the Windows; but none of these are good Service, unless it can be proved that fuch Subpana afterwards came to the Defendant's Hands, and that he was in the House at that Time, or had Notice of it, &c. and if the Defendant cannot be found or be beyond the Seas, on Affidavit thereof, if the Bill is to be relieved against an Action at Common Law, then the Court will, on Motion or Petition, grant an Order that Service on his Attorney at Law be deem'd good Service of the Defendant; and fuch Order and Subpana being ferved on fuch Attorney, he is bound to appear; and if he refuses; on an Affidavit being made of ferving fuch Attorney at Law with fuch Order and Subpana, and the Affidavit being filed, you may make out an Attachment against the Defendant for want of an Appearance, and thereupon move the Court for the Common Injunction to flay the Defendant's Proceedings at Common Law against the Plaintiff, which is granted of course; so where a Subpana is had against the Husband and Wife, Service on him alone, and giving Notice of its being against him and his Wife, is good as to both. If a Subpana be ferved on the same Day on which it is returnable, if it be before Noon, or at any time before the Rifing of the Court, the Service is good. And if a Subpana be ferved the same Day on which 'tis sealed, if it be before the Rising of the Court, it is also good. The Defendant being duly ferved

fi

th

th

W

Ye

of

Div

you:

wan

wer

the 1

tition

to ha

Defer

Co inforce Appearances, &c.

ferved with a Subpana, and not appearing, upon an Affidavit thereof, an Attachment may be iffued against him; the Form of which is as follows, viz.

# Attachment.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and fo forth; To the Sheriff of \_\_\_\_, Greeting: We command you to attach-fo as to have bim before us in our Court of Chancerywherefoever the faid Court shall then be, there to answer to us as well touching a Contempt which he, as it is alledged, hath committed against us, as also such other Matters as shall be then and there laid to his Charge; and farther to perform and abide fuch Order as our faid Court shall make in this Behalf: And hereof fail not, and bring this Writ with you. Witness Ourself at Westminster, the Day of in the Year of our Reign.

.

t

n

1-

15

CE

16-

to

me

of

ub-

'tis

art,

uly

To the Bottom of this Writ, on the Right Hand Side, put the Surname of the Master of the Rolls, and the Six Clerk in whose Division the Writ is made out: And indorse your Writ, By the Court at the Suit of A. B. for want of an Appearance, or for want of an Answer. And about the Middle of the Back of the Writ put the Surname of the Clerk in Court that makes out the Writ.

Note; You may move the Court, or petition his Honour the Master of the Rolls to have it returnable immediately if the Defendant was within ten Miles of London.

U 4 The

254

It has been held good Service (if a Person keeps the Door of his House shur, and refuses to open it) to leave the Writ under Seal hanging upon the Door of the House, or to put it into the House under the Door, or within the Windows; but none of these are good Service, unless it can be proved that fuch Subpana afterwards came to the Defendant's Hands, and that he was in the House at that Time, or had Notice of it, &c. and if the Defendant cannot be found or be beyond the Seas, on Affidavit thereof, if the Bill is to be relieved against an Action at Common Law, then the Court will, on Motion or Petition, grant an Order that Service on his Attorney at Law be deem'd good Service of the Defendant; and fuch Order and Subpana being ferved on fuch Attorney, he is bound to appear; and if he refuses; on an Affidavit being made of ferving fuch Attorney at Law with fuch Order and Subpana, and the Affidavit being filed, you may make out an Attachment against the Defendant for want of an Appearance, and thereupon move the Court for the Common Injunction to flay the Defendant's Proceedings at Common Law against the Plaintiff, which is granted of course; so where a Subpana is had against the Husband and Wife, Service on him alone, and giving Notice of its being against him and his Wife, is good as to both. If a Subpana be served on the same Day on which it is returnable, if it be before Noon, or at any time before the Rifing of the Court, the Service is good. And if a Subpana be served the same Day on which 'tis sealed, if it be before the Rising of the Court, it is also good. The Defendant being duly ferved

C

te

C

fu

th

thi

We

Ye

Har

of i

your

want

wer.

the I

Cour

tition to ha

Defen

No

the Reserve.

## Co inforce Appearances, &c.

ferved with a Subpana, and not appearing, upon an Affidavit thereof, an Attachment may be iffued against him; the Form of which is as follows, viz.

# Attachment.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Paith, and fo forth; To the Sheriff of --- , Greeting: We command you to attach-fo as to have him before us in our Court of Chancerywherefoever the faid Court shall then be, there to answer to us as well touching a Contempt which he, as it is alledged, hath committed against us, as also such other Matters as shall be then and there laid to his Charge; and farther to perform and abide fuch Order as our faid Court shall make in this Behalf: And hereof fail not, and bring this Writ with you. Witness Ourself at Westminster, the Day of in the Year of our Reign.

To the Bottom of this Writ, on the Right Hand Side, put the Surname of the Master of the Rolls, and the Six Clerk in whose Division the Writ is made out: And indorse your Writ, By the Court at the Suit of A. B. for want of an Appearance, or for want of an Answer. And about the Middle of the Back of the Writ put the Surname of the Clerk in Court that makes out the Writ.

t

11

1-

15

15

ce

18-

ta

me

of

ub-

'tis

urt,

ved

Note; You may move the Court, or petition his Honour the Master of the Rolls to have it returnable immediately if the Defendant lives within ten Miles of London.

U 4

The

Df Procestes and Proceeding

The same Affidavit will do as for a Subpana returnable immediately; but for a Petition wide under that Head.

If a Non est inventus is returned by the Sheriff, a Proclamation, directed also to the Sheriff, issues against him; the Form of which is as follows, viz.

#### Proclamation.

EORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of \_\_\_\_, Greeting: We command you on our Behalf, to cause publick Proclamation to be made in all Places within our Bailiwick, as well within Liberties as without, wherefoever you shall think it most convenient, that A. B. do upon his Allegiance, on \*\_\_\_\_personally appear before us in our Court of Chancery, wherefoever it shall then be: And nevertheless, in the mean Time, if you can find the faid A. B. to attach him, fo as to have him before us in our faid Court, at the Time before-mentioned, there to answer to us as well touching a Contempt, which he hath, as it is alledged, committed against us, as touching those Things which shall be then and there laid to his Charge, and farther to perform and abide fuch Order as our faid Court shall make in this Behalf: And hereof fail not, and bring this Writ with you. Witness Ourself at Westminster the -- Day of -- in the-Year of our Reign.

Here put

(

la

A

W

04

ve

ou

COL

to :

cery

hat

mai

ly a

A. ]

foun

15 a

as y

us in

it th

touch Mart

again

abide make

### Co inforce Appearances, &c.

To this Writ subscribe the Surname of the Master of the Rolls and Six Clerk; and indorse, it as before, with the Clerk in Court's Surname about the Middle of the Back of it.

And this being also returned Non est inventus, and if he stands farther in Contempt, then a Commission of Rebellion may be issued against him; the Form of which is as follows, viz.

## Commission of Rebellion.

GEOR GE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To A. B. C. D. E. F. and G. H. Greeting. Whereas by publick Proclamations made on our Behalf by the Sheriff of Middlefex in divers Places of that County, by Virtue of our Writ to him directed, A. B. hath been commanded upon his Allegiance personally to appear before us in our Court of Chancery at a certain Day now past; yet he hath manifestly contemned our faid Command: Therefore we command you, jointly and feverally, to attach, or cause the faid A. B. to be attached wherefoever he shall be found within our Kingdom of Great Britain, 15 a Rebel and Contemner of our Laws, fo as you have him, or cause him to be before us in our faid Court, on-wherefoever it shall then be, to answer to us as well touching the faid Contempt, as also such Matters as shall be then and there objected against him; and farther to perform and abide fuch Order as our faid Court shall make in this Behalf: And hereof fail not.

We

D

de

in

ng

at

To

De Procestes and Proceedings

We also hereby strictly command all and fingular Mayors, Sheriffs, Bailiffs, Constables, and other our Officers, and loyal Servants and Subjects whomsoever, as well within Liberties as without, that they by all proper Means diligently aid and assist you, and every one of you, in all Things in the Execution of the Premisses: In Testimony whereof we have caused these our Letters to be made Patent. Witness Ourself at Westminster this——Day of—in the—Year of our Reign.

To this subscribe the Master of the Rolls and Six Clerk's Names as before, and indorse it, By the Court. A Commission of Rebellion, for want of an Appearance, (or for want of an Answer) at the Suit of C.D. And towards the Bottom put the Six Clerk's Surname, and after that the Clerk in Court's Surname.

When you have made out the Commission of Rebellion, you must make two Docquets thereof; one upon a Half-Sheet of double Six-penny stamp'd Paper, and the other upon Half a Sheet of Paper unstamp'd; the Form of which Docquets are thus:

The Sheriff

THE King, and so forth. A Commission of Rebellion directed to A. B. C. D. E. F. and G. H. jointly or severally to attach J. K. Defendant, for want of an Appearance (or for want of an Answer) at the Suit of L. M. Plaintiff, returnable—W tness the King at Westminster the—Day of in the—Year of his Reign.

Here

b

fic

ft

ed

mo

ап

at

iffe

for

Ser

gra

que

land forth

plain

toou

fend;

daly

### Co inforce Appearances, &c.

Here put the Master of the Rolls and Six Clerk's Names, after that fold it up as you do an Order, and on the Back of the Docquets write at the Top, Commission of Rebellion, M. against K. and towards the Bottom the Six Clerk, and Clerk in Court's Surnames; and then give both these Docquets with the Commission to the Bag-bearer, who will get that Docquet that is stamp'd signed by the Lord Chancellor, and after that leave it with the Clerk of the Hanaper-Office, and the other lest with one of the entring Registers, who marks the Docquet stamp'd with an Intratur, before it be signed by the Lord Chancellor.

If the Defendant stands farther in Contempt, then on a Non est inventus returned by the Commissioners, the Court may be moved for an Order for a Serjeant at Arms; and if he cannot be taken, upon the Serjeant at Arms's Certificate, a Sequestration may be issued against him, upon moving the Court for an Order; which upon producing the Serjeant at Arms's Certificate, is always granted of Course; the Form of which Se-

questration is as follows, viz.

Ť

C

D.

nrnit

es

ere

## Sequestration.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and fo forth, To \*————Whereas A. B. Com-\* Here name plainant, exhibited his Bill of Complaint in the Commissioner Court of Chancery against C. D. De-Sequestrators. sendant: And whereas the said C. D. being duly served with a Writ issuing out of our said

faid Court, commanding him, under the Penalty therein mentioned, to appear to and answer the faid Bill, hath refused so to do, and thereupon all Process of Contempt hath iffued against him unto a Serjeant at Arms: And whereas the faid C. D. hath of late absconded, and so concealed himself that the faid Serjeant at Arms hath not been able to find him, as by the Certificate of the faid Serjeant at Arms appears: Know ye therefore that we, in Confidence of your Prudence and Fidelity, have given, and by these Prefents do give to you, any three or two of you, full Power and Authority to enter upon all the Meffuages, Lands, Tenements and real Estate whatsoever of the said C. D. and to take, collect, receive and sequester into your Hands, not only all the Rents and Profits of the faid Messuages, Lands, Tenements, and Real Estate, but also all his Goods, Chattels, and Personal Estate whatfoever: And therefore we command you, any three or two of you, that you'do at certain proper and convenient Days and Hours, go to and enter upon all the Messuages, Lands, Tenements, and Real Estate of the faid C. D. and that you do collect, take, and get into your Hands not only the Rents and Profits of all his faid real Estates, but also all his Goods, Chattels, and Person nal Estate, and detain and keep the fame under Sequestration in your Hands until the faid C. D. shall fully answer the Complainant's Bill, clear his Contempts, and our faid Court make other Order to the contrary. Witness Ourself at Westminster the-Day of \_\_\_\_ in the \_\_\_ Year of our Reign.

all

an

aft

tal

de

do

ed.

is al

the

obey

It

Affid

a Sub

had :

Anfu

an A

or th

Decre

A

Order

Maste

### To inforce Appearances, &c.

To this subscribe the Master of the Rolls and the Six Clerk's Surnames, as before, and indorse, A Commission of Sequestration against C. D. Defendant, at the Suit of A. B. Complainant.

After the Defendant has appeared, and does not answer in Time, an Attachment issues of Course; and if he continues in Contempt, the several before-mentioned Processes go out against him of Course.

And when a Defendant wilfully stands out all Process of Contempt upon an Appearance, and Refusal to answer; the Court, after the Return of the Sequestration, will take the Matter of the Bill pro confesso, and decree it accordingly; but this cannot be done unless the Defendant hath first appeared.

## Of Attachments.

d

0

d

P

te

a,

he

es,

10

me

the

in-

our

tra-

gn. To A N Attachment is the first Process of Contempt in this Court. And as it is always founded upon some Contempt of the Court, so it is most commonly for not obeying the Process or Orders of the Court.

It may generally be had of Course, upon Affidavit that the Desendant was served with a Subpæna, and appeared not: Or it may be had after an Appearance, for want of an Answer, without an Affidavit; but 'tis upon an Affidavit for Non-payment of Costs; or the Non-performance of an Order or Decree.

A Solicitor must ferve his Client with the Order for taxing his Bill of Costs, and the Master's Report, whereby such Costs are ascer-

Of Process and Proceedings

ascertain'd, before he can take out an Attachment for them. Barnard. 266.

In these Attachments, and all other Writs, Regard is to be had to the Jurisdiction and Privileges of certain Places, as the Cinque Ports, and the Counties Palatine of Lancaster, Chester, and Durbam; and the Direction of the Writs in such Cases, is of a peculiar Form: As for Instance, where an Attachment issues against an Inhabitant of Hastings, Rye, Romney, &c. it is directed to the Lord Warden of the Cinque Ports.

And if the Writ is to be executed within the County Palatine of Lancaster, then it is directed thus, viz.

Attachment to GEORGE the Second, &c. To our Lancaster. Chancellor of our County Palatine of Lancaster, or his Deputy, Greeting: We command you, that by our Writ under your Seal of our aforesaid County duly issued, you command the Sheriff of our aforesaid County, to attach, &c. [as before]

And if the Attachment be awarded against any dwelling within the County Palatine of Chester, then it is directed to the Chamberlain of Chester in this Form, viz.

Attachment to GEORGE the Second, &c. To the Chefter.

Chamberlain of our County Palatine of Chefter, or his Deputy there, Greeting: We command you, that by our Writ under the Seal of the County Palatine aforesaid duly to be made, you command the same Sheriff that he attach, &c.

GEORGE

y

of.

ing

the is in

ment

of A

Ob riff d

f dire

him;

ed in

Pound

Day f

hat T

eth th Court, GEORGE the Second, &c. To the Attachment to Right Reverend Father in God—by Durham. Divine Providence Lord Bishop of Durham, or his Deputy there, Greeting: We command you, that by our Writ under the Seal of the County Palatine aforesaid duly to be made, you command the same Sheriff that he attach, &c.

GEORGE the Second, &c. To the War-Attachment to den of our Prison of the Pleet, or his the Warden of Deputy there, Greeting: We command the Fleet.

you to attach, &c.

GEORGE the Second, &c. To the Attachment to Marshal of the Marshalsea of our Court the King's of King's Bench, or his Deputy there, Greeting: We command you to attach, &c.

And Note; Attachments for Costs are of the like Form as those above, only the Writ is indorsed thus; By the Court for Non-Payment of Costs (naming the Sum) at the Suit of A. B.

r

1

Æ

of

1-

the

of

We

der

faid

ame

GB

Observe that in all Cases where the Sheiff does not make his Return of the Writ,
if directed to him, this Court will amerce
him; which Amercements are to be estreated in the Exchequer, and are commonly five
founds. But it is usual to give the Sheriff a
Day for that Purpose, and if he do not by
hat Time return the Writ, the Court setth the Amercement; And sometimes the
Court, upon a Notice of Motion served on
the

Of Processes and Proceedings

the Sheriff or Under-Sheriff, will order him to stand committed to the Fleet Prison for not returning the Attachment or other Process.

Note; If the Attachment is directed to the Sheriffs of London or Middle fex, or any other Corporation who have a Grant of the Fines and Amerciaments, as London, Mid. dlesex and Bristol have, and if the Party is taken up upon the Attachment, and a Ceti Corpus returned, then the Plaintiff moves for a Messenger upon the Cepi Corpus returned, and at the Time of making the Motion muft produce the Attachment and Return to the Court, and this Motion is of Course: And the Court orders the Party to be taken into the Custody of the Messenger till he hath answered the Bill, cleared his Contempts, and farther Order. The Reason of this Proceeding is because, as is before observed, the Estreats and Amerciaments go to the Sheriffs themselves, and there is no other Way left to do Justice to the Plaintiff, but by ordering the Defendant to be taken into Custody of the Court's own Officer: For the Court cannot estreat the Sheriff as in other Cases for not making a Return, or not bringing in the Body, by Reason the Estreats go to the Sheriff.

hi

or

Ar

ma

but

top

1

cant

paid

Plair

fuch

Anfv

Ha

fue

before

Bail being taken on an Attachment, a Messenger was fent to bring in the Party.

Gilb. 85.

Attachments must be entred in the Register's Book (and formerly they were also enter'd in the House-Book; but this last is now disused,) expressing the Cause of issuing the Attachment. But the Party that make

1

out the Attachment usually first acquaints the adverse Clerk in Court; but this he needs not do unless he pleases.

## Tefte, March 1740.

Middleffex, A Trachment against C. D. Note to enter Gent. Defendant for want with the Reof his Appearance at the Suit of A. B. Esq; gister. Plaintiff, Returnable.

To this the sworn Clerk's Name who enters it is subscribed, and the Day it is enter'd, as above, and then it is to be left with one of the entring Registers, to whom four-

teen Pence is therewith paid.

Note; When a Party is taken up upon an Attachment (or any of the beforemention'd Processes) he must pay Costs, and either give his Bond with Sureties for his Appearance, or enter his Appearance with the Register. And after an Attachment with Proclamation returned, no Commission to answer shall be made, nor no Plea or Demurrer admitted, but upon special Order obtained for Liberty toput in such Plea or Demurrer.

When an Attachment is duly obtained, it cannot be discharged till the Defendant has paid the Costs, or tendered them to the Plaintiff's Clerk in Court; but upon either such Payment, or Tender, and filing his Answer, Plea or Demurrer, he is dischar-

ged of Courfe.

1

at

to

10

in

not

the

t, 2

irty.

egi-

aft is

uing

nakes

OUT

#### Attachment with Proclamation.

Have already shewn how this Process ifsues: The Proceedings upon which see before;

X

Of Processes and Proceedings

Note; Where a Corporation, as the Mayor and Aldermen of London, or any other Corporation, are made Defendants to a Bill, and they refuse to appear to or answer a Bill, or to perform the Decree of the Court, such Corporations cannot be attached; but instead of an Attachment you make of Course a Distringuist to the Sherists of the City, or to the Sherists of the County where such Corporations are resident; the Form whereof is as follows, viz.

### Distringas.

EORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith and fo forth, To the Sheriff of the County of-Greeting: We command you to make a Distress upon the Lands and Tenements, Goods and Chattels of-within your Bailiwick, fo as neither they the faid-nor any other Perfon or Persons for them, may lay his or their Hands thereon until our Court of Chancery shall make other Order to the contrary; and in the mean Time you are to answer to us for the faid Goods and Chattels, Rents and Profits of the faid Lands, so that the faidmay be compelled to appear before us in our faid Court of Chancery—wherefoever it shall then be, there to answer to us as well touching a Contempt, which they, asit is alledged, have committed against us, as also such other Matters as shall be then and there laid to their Charge; and farther to perform and abide fuch Order as our faid Court shall make in this Behalf; and hereof fail not, and bring this Writ with you. Witness

th

W

Te

by

Co

Dil

Arin

9011,

you,

nem

by t

Day

being

fel th

(upor

the fa

Lands

the fa

ness Ourself at Westminster the—Day of
in the—Year of our Reign.

Indorse, By the Court at the Suit of A. B. for want of an Appearance or Answer. Writ must also be entered with the Register in the same Manner as you do an Attachment. This is a close Writ, and made up as an Attachment, and when fealed, you must deliver it to the Under-Sheriff, who is bound to make a Return thereof, after it is returnable, and there must be fifteen Days between the Teste and Return. And when the Sheriff has made his Return, you carry it to your Clerk in Court, who thereupon makes out an Alias Diftingas, which is the fame with the Distringas, only after the Words We command you, insert (as we have before commanded you,) to make a Distress upon the Lands, Tenements, &c. And then deliver this Alias Distringas to the Under-Sheriff. which must also be fifteen Days between the Teste and Return: And it being returned by the Sheriff, you carry it to the Clerk in Court, who thereupon makes out a Pluries Distringas, which is the same with the Distringas, only after the Words, We command you, insert, as we bave twice before commanded you, to make a Diffress upon the Lands, Tenements, &c. And this being also returned by the Sheriff, which must also be fifteen Days between the Teste and Return: And being returned by the Sheriff, you get Counsel thereupon to move for a Sequestration (upon a Pluries Distringus returned) against the faid Corporation, to sequester all the Lands, Tenements, Goods and Chattels of the faid Corporation until they appear to X 2

Ö

y

us

nd

-

in

ver

\$ 25

asit

as

and

r to

faid

reof

Wit-

ness

or answer the Plaintiff's Bill, or perform the Decree, and the Court make other Order to the contrary; which Sequestration cannot be discharged till the Corporation has performed what they are injoined to do, and paid the Costs of the several Distringas's, and the Sequestration, and the Commissioners their Pees for Sequestring; and then they move to discharge the Sequestration, which will be discharged of Course.

th

th

the

the

lin

Seq

ord

VICE

obfi

or I

Pari

his I

vide

F

And if the Defendant be a Member of Parliament, he must be served with a Copy of the Bill and a Subpana when Privilege of Parliament is out, and if he refuses to appear to the Bill in due Time according to the Course of the Court, you make an Affidavit of the Service of the Subpana and Copy of the Bill, and move for a Sequestration against the Defendant, to fequester his personal Estate, and the Rents and Profits of his real Bstate, which the Court grants of Course, unless the Defendant being personally served with such Order shall within eight Days after fuch Service shew unto the Court good Caufe to the contrary : And if after the Defendant is served with this Order, and he fill perfift in refusing to appear to the Plaintiff's Bill, then upon making an Affidavit of the Service of this Order, you may move the Court after the eight Days are expired, to make the Order absolute: And when such Order is drawn up and entered, you may have the Sequestration made out against the Defendant. And the same Method is observed against a Defendant a Member of Par-Isament for want of his Answer, or for Nonperformance of a Decree, &c. after being ferved with a Writ of Execution thereof: For

For his Body cannot be attached by reason of his being a Member of Parliament.

So where a Defendant is a Lord, or Peer. or a Bishop of this Realm, you pray in the Process of your Bill for the Lord Chancellor's Letter Miffive to be directed to fuch Defendant, defiring him to appear to, and answer the faid Bill: And after such Bill filed, you petition the Lord Chancellor for his Letter against the said Defendant, which his Lordship having granted, you serve the Defendant therewith, and also with an Office-Copy of the faid Bill; and if he refuses upon fuch Service to appear thereto, you then ferve him with a Subpana to appear to the faid Bill; which if he refuses to do. then upon making an Affidavit of ferving the Defendant with fuch Letter, Copy of the Bill, and Subpena, you then, upon filing fuch Affidavit, move the Court for a Sequestration, as before; which the Court orders, unless Cause in eight Days after Service of the Order, as before. And you must observe such Method against a Peer, Lord, or Bishop, as you do against a Member of Parliament, as aforesaid.

For a Petition to the Lord Chancellor for his Lordship's Letter Missive to a Nobleman. vide ante, fol. 48. o snomen State of si elelau

de not performent a Decreei, in which (

nor there in the Defendant to ent pearings with the Regiller . For the C

reifficances ought to bring the Police

to Court, and flet Courtel to mo

enon ad manyoshanis/ add morrate)

or the That it int, where he is to

ther Commissioners ought not to take Ball

d

2-

lli

Ps

he

the

to

nch

nay

the fer-

Par-

on-

eing

eof:

For

## Commission of Rebellion.

THIS Writ is usually directed to such Commissioners as the Plaintiss names, which are commonly four, or more, as the Plaintiss or his Solicitor, shall chuse. If the Return be of any long Distance, &c. and the Party offers good Bail, the Commissioners ought to take it, and not to keep him lingering in Prison, in their Houses. 2 Chan.

Rep. 262.

If the Commissioners refuse to return the Writ, the Court, on Motion or Petition, will order them to return it; which Order, if upon Service they obey not, Process of Contempt may iffue against them. And where private Persons are made Commissioners, if they take the Party, and fuffer an Escape, the Court on Affidavit, and Motion, and a Day given to shew Cause to the contrary, will order them to be committed till they bring him in, or pay the Debt, &c. Toth. 38, 39. And therefore it is necessary and usual for the Commissioners to take a Bond from the Person so in Contempt, with one or more Sureties for his Appearance, unless it be for Payment of Money decreed, or not performing a Decree; in which Cafe the Commissioners ought not to take Bail, nor suffer the Defendant to enter his Appearance with the Register; but the Commissioners ought to bring the Defendant into Court, and get Counsel to move the Court that the Defendant may be turn'd over to the Fleet Prison, where he is to remain till he has paid the Money, or performed the

fh

of

jea

no

the

pai

fyir

Car

Ord

Thi

der

whe

Cou

shall

the 1

and i

1721

Arms

into (

By

the Decree, and clear'd his Contempt; and then the Court will order him to be difcharged: And if any Person shall rescue him, the Court will order the Rescuer to stand committed.

A Wife was taken upon this Process, and carried bound to Prison, and kept very close, the Husband not being taken; the Court ordered that she should be discharged, and Costs paid her, as well in respect to the bringing her in without her Husband, as her being so hardly dealt with.

## Serjeant at Arms.

A FTER any Order for a Serjeant at A Arms shall be granted, the Register hall draw up the same, and at the Request of the Serjeant at Arms deliver it to the Serjeant or his Deputy; and the said Order is not to be discharged, nor the Contempt thereupon, without the Serjeant's Fees be paid, and a Certificate under his Hand testifying the same. Vide Ord. Can. 4 Nov. 26 Car. 2. 1674. And this Order is revived by Order bearing Date July 13. 1 Jac. 2. 1685. This farther Order is also revived by an Order of the 12th of June 6 W. 3. 1694. whereby it is likewise order'd, that the Counsel moving for a Serjeant at Arms hall immediately, in Court, deliver to the Register the Commission of Rebellion, and if required, name the Clerk in Court.

d.

C.

y

1

h

e,

d,

(e

ul,

p-

m-

in-

the

ret

ain

ned

the

By Order, bearing Date May 13. 7 Geo. 1.

1721. Upon the Petition of the Serjeant at Arms, that he is intitled to take all Persons into Custody who stand in Contempt to a

4 Com-

#### De Procelles and Proceedings

Commission of Rebellion; his Lordship declared, that no Sequestration can regularly issue to sequester the Estate of any Person who cannot be found; but upon the Return Non est inventus of the Serjeant at Arms: and therefore order'd, that from thenceforth, where any Person was in Contempt, either for want of an Appearance or Answer, or for not yielding Obedience to any Order or Decree of this Court, (unless for contemptuous Language, or the beating or abusing any Perfon in the Service of the Process of this Court, or other Contempts of the like Nature) the Serjeant at Arms should apprehend and bring the Contemner to the Bar of this Court to answer such Contempt; but if the Contemner could not be found, then to return Non est inventus, to the End a Sequestration might regularly iffue, according to the ancient Usage and Practice of this Court; and that Process should for the future issue accordingly; and that it should be made a Part of all Orders for giving Time to answer, or for doing any other Act upon the Party's entring his Appearance with the Register, that the Party, when he enters such Appearance, should likewife consent that a Serjeant at Arms should go against him, as upon a Commission of Rebellion returned Non eft inventus, in Case of Non-compliance.

ti

cl

H

to

de

Re

Mo

of t

to t

gag

who

11077

### Sequestration

THIS Commission of Sequestration is generally directed to four or more Commissioners, empowering them to seize the Defendant's Real and Personal Estate into their Hands

Hands, and to receive and sequester the Rents and Profits of his Real Estate, until the Defendant shall have answered the Plaintiff's Bill, or performed some other Matter which has been ordered by the Court, for not doing whereof he is in Contempt, as aforesaid.

And these Commissioners are accountable to the Court, and are to act in the Execution of their Office, according to the Directions of the Court, and they are to make Return from Time to Time, of what they have feifed, as the Court directs; and are to account for what comes to their Hands, and to bring the Money into Court, as the Court hall direct, to be put out at Interest, or otherwise, as shall be found necessary. But this Money is not usually paid to the Plainiff, but is to remain in Court till the Defendant hath appeared or answered, and cleared his Contempt; and then, whatever hath been feifed by Virtue of the Sequestration, shall be accounted for, and paid him: However, the Court hath the Whole under their Power, and may act therein agreeable to the Equity of the Cafe. And the Plaintiff's Counsel may move and obtain an Order for Tenants to attorn, and pay their Rents to Sequestrators, to sell and dispose of the Goods of the Party, and keep the Money in their Hands, or bring it into Court, as the Court shall see fit.

e.

2

1,

۲,

p-

25

011

ge-

De-

neir

nds

Where Sequestrators seise the Real Estate of the Party, any Person who claims Title to the Estate so sequestered, either by Mortgage or Judgment, Lease, or otherwise, or who hath a Title paramount to the Sequestration, shall not be obliged to bring a Bill to

contest

contest such Title; but may move the Court, as of Course, to be examined pro interesse suo: And in this Case the Plaintiff is to exhibit Interrogatories in order to examine him, and for a Discovery of his Title to the Estate; and he may be examined thereon according. ly: and the Master must state the same to the Court, and the Parties may enter into Proof touching the Title to the Estate in Question; and when the Master hath stated the whole Matter, the Court gives Judgment upon the Report: And if it appears that the Party who is examined pro interesse suo, hath a plain Title to the Estate, and is affected with the Sequestration, then it is to be difcharged as against him, with or without Costs, as the Court fees fit upon the Circumstances of the Case: And there may happen other Circumstances and Proceedings upon a Sequestration, which cannot fall within the general Rule here laid down, and which must be determined according to the Nature of the Case, and as it appears to the Court.

Where a Suit is for Lands, a Sequestration will be granted of all the Party's Lands, Tenements and Hereditaments, with an Injunction for the Profits of the Lands, Tenements, &c. to be delivered to the Plaintiff, by the Sheriff or the Commissioners for that Purpose named in the Commission of Sequestration: And an Injunction upon a Sequestration is the utmost Process that this Court can issue for Contempt of Non-appearance, &c.

A Sequestration may be granted either before or after Hearing: And it may be granted against an Infant for Non-appearance; and also against a Peer. 2 Chan. Ca. 163.

A Sequestra-

al

D

pe

2 (

Wa

De

ref

pus

Mo

hin

que

cess

A Sequestration is usually had of both Lands and Goods, where the Thing decreed is a personal Duty. 1 Chan. Ca. 92.

And it hath been sometimes granted for Money of the Parties in other Men's Hands.

Totb. 173.

This Process is like an Outlawry at Common Law; so that if a Defendant who cannot be found to serve Process upon, is proceeded against to a Sequestration, and does not then appear, you may proceed against the rest. I Chan. Ca. 139.

Where Lands of the Husband, out of which an Annuity to the Wife issued, were fequestred; the Husband dying, the Sequestration was discharged as to the Annuity.

I Chan. Rep. 247.

If a Party does not obey a Decree, all Process of Contempt may iffue against him; and if not taken, the Court will grant a Sequestration. So if he be taken and lie in Prison, obstinately refusing to perform the Decree, the Court will grant a Sequestration. 2 Chan. Rep. 151.

A voluntary and fraudulent Conveyance, to avoid an approaching Sequestration for a personal Duty, is no Bar to the Sequestration.

2 Chan. Ca. 46.

1

0

13

e-

C-

ts,

he

ofe

71:

he

for

be-

nt-

ce;

ra-

Upon an Affidavit that the Defendant was gone to Holland to avoid the Plaintiff's Demand; and he having before been arrested upon an Attachment, and a Cepi Corpus returned by the Sheriff, the Court, upon Motion granted a Serjeant at Arms against him; and upon the Return thereof a Sequestration. 1 Vern. 344.

A Sequestration that issues as a Mesne Process of the Court, will be discontinued, and deter-

### Of Processes and Proceedings

where a Sequestration issues in Pursuance of a Decree, and to compel the Execution of it, there, tho' the same be for a personal Duty, it shall not be determined by the Death of the Party. I Vaugh. 58. Sed vide I Vern. 118, 166.

A Sequestration binds from the very Time of awarding the Commission, and not only from the Time of executing it, and its being laid on by the Commissioners; for if that should be admitted, then the inserior Officer would have ligandi & non ligandi potestatem. I Vern. 58.

e

to

fo

Ti

Te

and as i

Mo

mei

afor

bad

cute

agair

the (

Inte

feren

charg

broug

to be

only

the A

The Party who takes out a Sequestration, shall not be answerable for the Acts of the Sequestrators, for they are the Officers of the Court. 1 Vern. 160, 161.

Sequestrators on a Mesne Process are accountable for all the Profits, and can retain only so far as to satisfy for the Contempu.

1. Vern. 248.

Having now confidered the several Processes of Contempt distinctly, I shall conclude this Chapter with some Observations upon Contempts in general.

All Process made upon any Contempt, is to be made out into the proper County where the Party is usually resident, unless he shall be at that Time occasionally in or about London; in which Case it may be directed into the County where he shall then be, that it may be served upon him there: And he who prosecuteth for Contempt, is to do his best Endeavour that the precedent Process bed duly executed: And if a Party arrested upon a Proclamation, or Commission of Rebellion, or by the Serjeant at Arms, shall make it appears

pear unto the Court by Proof, that the Profecutor of those Processes hath not done his best Endeavour to have the precedent Process duly executed, then the Party so offending shall pay the other Party Costs,

Ord. Chan. Nov. 17. 7 Car. 1631.

And if any Person shall be taken upon Procels otherwise, or any Way irregularly isfued, the Party so taken, first appearing unto, and fatisfying the Process which had irregularly issued against him, shall be discharged of his Contempt, and have his full Cofts to be taxed of Course, either by a Master, or by the Six Clerk, not towards the Cause, for fuch irregular Profecution, from the Time the Error first grew.

All Attachments on Process shall be discharged upon the Defendant's Payment, or Tender to the Plaintiff's Clerk, and Refufal, of the ordinary Costs of the Court; and filing his Plea, Answer or Demurrer, as the Case regularly requires, without any Motion in Court, or Petition on that Behalf.

And if after such Conformity, and Payment of Costs (or Tender and Refusal, as aforesaid) any farther Prosecution shall be had of the faid Contempt, the Party profe-

cuted shall be discharged with Costs.

And where a Contempt is profecuted against any Man, he shall not be put to move the Court, as was formerly used, either for Interrogatories to be exhibited, or for Reference of his Examinations, or for his Difmarge when examined; but when he shall be brought in by Process, or shall appear gratis to be examined upon a Contempt, he shall only give Notice of fuch his Appearance to the Attorney, or Clerk on the other Side.

And

15

. .

15

16

all

011-

nto

t it

pho peft

s 60

pon

lion,

ap-

pear

Of Processes and Proceedings, &c.

And if within eight Days after such Appearance, and Notice given, Interrogatories shall not be exhibited whereon to examine the Party; or if no Reference be procured of his Examination, nor Commission taken out on the other Side, nor Witnesses examined in Court, to prove the Contempt within one Month, then the Party thus prosecuted ought to get an Order to be discharged, and for a Master to tax the Costs.

If after Appearance, and Interrogatories exhibited as aforesaid, the Party appearing shall depart before he is examined, without Leave of the Court, upon Motion, and Certificate of the same, &c. he shall stand committed without farther Day to be given him; and is not to be discharged from his Contempt, until he hath been examined, and is cleared thereof.

And if he shall, upon his Examinations, or by Proofs, be found in Contempt, and thereupon committed, he shall clear such his Contempts, and pay the Prosecutor his Costs before he be discharged of his Imprisonment.

And tho' he be clear'd of his faid Contempt, yet he shall have no Costs, in Respect of his Disobedience in not submitting to be examined without the Prosecutor's Trouble and Charge in moving the Court.

All Persons guilty of any Breach of the Orders of the Court, may be committed for the Contempt, which is to be examined into upon Oath on Interrogatories; and if the Contempt be found, the Parties must clear it, and pay Costs to the Prosecutor, &c.

Returns

The Returns of the Terms.

the for into

# Hillary Term.

This Term begins the 23d of January, and ends the 12th of February following; and bath four

In eight Days after St. Hillary next enfuing. For the Writ.

In fifteen Days next enfuing after St. Hillary. On the Morrow of the Purification of the Bleffed Virgin Mary next enfuing. In eight Days after the Purification of the Bleffed Virgin In eight Days next enfuing after St. Hillary. In fifteen Days after St. Hillary next enfuing.

In eight Days after the Purification. Mary next enfuing.

In eight Days next enfuing after the Purification of the Bleffed Virgin Mary.

Hillary. In fifteen Days after Saint In eight Day after Saint 🛪 For the Label.

On the Morrow of the Hillary. Purification.

# Eafter Term.

This Term begins the Wednesday Fortnight, or Seventeen Days after Easter-Day, and ends the Monday next after Ascension-Day; and bath sive Returns.

On the Morrow of the Ascension of our Lord next enfuing. In fifteen Days next enfuing after Eafter.

From the Day of Eafter next enfuing in three Weeks.

From the Day of Eafter in three Weeks next enfuing.

From the Day of Eafter next enfuing in one Month.

From the Day of Eafter in one Month next enfuing. From the Day of Eafter next enfuing in five Weeks. From the Day of Eafter in five Weeks next enfuing. In fifteen Days after Eafter next enfuing.

In fifteen Days after Eafter.

In one Month after Easter.

On the Morrow of the

In five Weeks after Eafter.

This Term begins the Friday next after Trinity Sunday, and ends the Wednesday Fortnight af-ter, and bath four Returns. [See 32 H. 8. c. 21.] Trinity Term.

On the Morrow of the Holy Trinity next enfuing.

On the Morrow of the Tri- of From the Day of the Holy Trinity next enfuing in three In eight Days after the Holy Trinity next enfuing. In eight Days next enfuing after the Holy Trinity. In fifteen Days after the Holy Trinity next enfuing. In fifteen Days next enfuing after the Holy Trinity.

In eight Day after of In fifteen Days af-

ter Trinity.

In three Weeks after Tri-

Weeks, From the Day of the Holy Trinity in three Weeks next

This Term begins the 23d of October, and ends the 28th of November, and bath six Returns. Michaelmas Term.

Yerom the Day of St. Michael next enfuing in three Weeks. Yerom the Day of St. Michael in three Weeks next enfuing. Yerom the Day of St. Michael next enfuing in one Month. From the Day of St. Michael in one Month next enfuing. [See 16 Car. 1. c. 6.]

4. On the Morrow of St. Martin next enfuing.

On the Morrow of All Souls next enfuing.

C5. In eight Days after St. Martin next enfuing.

L In eight Days next enfuing after St. Martin.

L In fifteen Days after St. Martin next enfuing. In fifteen Days next enfuing after St. Martin. Immediately after the Receipt of this Writ. Without Delay. on of the sight was of

On the Morrow of All Souls.
On the Morrow of Saint man Martin.
In eight Days after Saint In one Month after Saint Michael.

In three Weeks after Saint

Michael.

In eight Days after Saint Martin.

In fifteen Days after Saint Without Delay. Martin. Immediately.

#### CHAP.

Of Appearing, Preferring Costs, and Answering; and also of Disclaimers.

TF the Defendant lives ten Miles from Lon-I don, he has four Days to appear in after the Return of the Subpana, unless it was ferved four Days before the Return, and then he ought to appear at the Return-Day, or the next after at farthest: But if he lives beyond that Distance, then he has eight Days after the Return; yet if served eight Days before the Return, he ought to appear on the Return-Day or next Day after: But if the Defendant living within ten Miles of London, be ferved fix or feven Days, or more, before the Return, then he shall appear at the Return-Day or the next Day after: And fo if he be ferved one, two, or three Days before the Return: And if he lives beyond that Distance, then if he be lerved either the Morning of the Return, or one Day before, in such Case he hath ight Days to appear, but where he is ferved ight Days or more before the Return, he as only one Day at most after it to appear n. And this, I think, is the strict Practice Immediately aft Without Delay. the Court. But yet if a Defendant lives wenty Miles from London, he is entitled to aswer by Commission, and then he has fually Time till the first Return of the enling Term; or longer, on Cause shewn by lotion or Petition.

the

After a Defendant has been ferved with a bpena, and given Directions to a Clerk in Y 2 Court

Court to appear for him, if fuch Clerk in Court finds that the Bill is not entred, he usually puts up a Note in the Six Clerks Office, as follows:

#### Enter Bill.

A. against B. Lead to the man was to all producting Const

But if he has preferred Costs, then he writes thus:

Enter Bill, Cofts preferr'd. Prior ti, beat multo

A. against B. 2 Jane 2017 (upono) filidavit that she

Se

De

par der

the

atta upo

Plai

07 II

clam

then

forth

torn

Rebe

Serjea

Orde

dant's

Profit

those

Court

But of Non ef

she advance have to several by D.

Which Note the Defendant's Six Clerk enters in the Costs Book.

And this Note is also usually affix'd to the Middle Pillar in the Office. When a Subparta has been ferv'd, and no Bill is filed, the next Day after the Subpana is returnable, b writes a Note, Enter Cofts, A. against B. and leaves it with the Six Clerks Porter, or in the Hall below the Office where the Cofts Book kept, and the Six Clerk enters it in the Book; which being done, and the Lin ftruck, the Clerk in Court makes out a Bi of Costs, and carries it before any one the Masters in Chancery; who will tax! and fet his Name to the Bill of Costs: An if it be a Town Cause, he usually allows of Pound three Shillings and four Pence,

one Pound fix Shillings and eight Pence; and if a Country-Cause, one Pound thirteen Shillings and four Pence. And that Bill of Costs is carried to the Register, who enters it, for which one Shilling and four Pence is paid, and then he takes out a Subpana for the Costs: However some have ventur'd to enter the Costs with the Register, without taxing, and others have taken out a Subpana for Costs, without taxing the Costs, or entering; but these Methods, if contested, may perhaps admit of an Irregularity.

This Subpana for Costs (which is always payable to the Defendant or Bearer) must be served on the Plaintiff personally, and the Costs demanded of him; and if upon such Service he refuse to pay the faid Costs, the Defendant may (upon Affidavit that the Subpana for Costs was so served; and the Money demanded) have an Attachment directed to the Sheriff of the County where he lives, to attach him for the Costs: And if the Sheriff upon the Attachment make Return that the Plaintiff cannot be found, then a Proclamation may be iffued against him; and that Proclamation being likewise return'd as aforesaid, then a Commission of Rebellion may be sued forth against him, &c. And upon the Return of a Non est Inventus on a Commission of Rebellion, then you have an Order for a Serjeant at Arms, and on his like Return an Order for a Sequestration against the Defendant's personal Estate, and the Rents and Profits of his real Estate, until he shall pay those Costs, clear his Contempt, and the Court take other Order to the contrary: But observe in all these Processes where a Non est inventus is returned, there must be fifteen Y 3

114

exi

b

809

th

oki

th

Lin

a Bi

ne (

VS OF

ce, on

fifteen Days between the Teste and Return. The usual Method of a Defendant's appearing, is (either by himfelf, or Attorney) to employ or retain a Clerk in Court, or Waiting Clerk to appear for him. And Recourse is to be had to the General Bill-Book before mentioned, to fee who filed the Bill: which being filed, the Defendant's Clerk then goes to the Plaintiff's Clerk in Court to appear thereto, who thereupon enters his Appearrnce; after which he goes into the Study of the Plaintiff's Six Clerk who filed the Bill, and there takes it from the File, at the same Time leaving a Note with the Six Clerk, and entering it in his Book there. But if another Clerk in Court has appeared for any other Defendant before, then the Plaintiff's Clerk in Court is applied to, who there. upon takes down the Appearance, and then the Clerk in Court, who appeared before for another Defendant, is applied to, of whom the Bill is received in Order to be copied.

R

if

he

D

for

ly

th

Re

cef

ent

Or

teri

faid

ed I

Cler

upoi

dant

in C

him,

put i

accor

arrest

tiff m

Arms

tempt

pon

dant a

tion to

An

As to Appearances they are either voluntary, or compulsory: Voluntary, when the Defendant comes in upon the Return of the Subpæna and appears as aforesaid; Compulsory where he is taken and brought in upon an Attachment, Proclamation, Commission of Rebellion, or by the Serjeant at Arms; in which Cases he must enter his Appearance with the Register, tho' sometimes upon being arrested upon an Attachment or Proclamation the Sheriff will take a Bail-Bond of the Defendant in forty Pounds Penalty, conditioned to perform what the Defendant is arrested for by the Return of the Writ; and if the Defendant does not answer by

the Return of the Writ, the Bail-Bond may

be put in Suit and recovered at Law.

But if the Defendant has a Mind to enter his Appearance with the Register, he is carried to the Register's Office, and one of the entering Registers writes a Certificate, on a double Sixpenny stampt Sheet, of the Defendant's entering his Appearance with the Register on the Writ he is arrested upon, and consenting that a Serjeant at Arms shall iffue against him for his Contempt in Case he is not discharged therefrom: Or if the Defendant be arrested in the Country at fome Distance where he cannot conveniently come to London, he may obtain an Order that he may enter his Appearance with the Register by his Clerk in Court on such Process; and his Clerk in Court having sufficient Authority for that Purpose carries the Order to the Register's Office, and the entering Register writes a Certificate on the faid Order of the Defendant's having entered his Appearance with the Register by his Clerk in Court in Manner as aforesaid. And upon obtaining such Certificate the Defendant is discharged from his Arrest: But then in Case such Process regularly issued against him, he must obtain an Order for Time to put in his Answer, and put in his Answer accordingly, and pay the Costs of his being arrested on such Process, otherwise the Plaintiff may obtain an Order for the Serjeant at Arms to apprehend him for his faid Contempt.

18

10

6-

an

of

in

nce

be-

cla-

of

lty,

lant

rit;

r by

An Order was obtained by Contrivance upon the Statute of 5 Geo. 2. The Defendant appeared to the Bill, and on Application to the Court they set aside the Order.

Y 4

The Appearance to the Bill must be set

aside likewise. Barnard, 403.

'Tis not sufficient to be sworn by the As. fidavit, that the Party making it was informed and believes, that the Defendants withdrew themselves in Order to avoid being served with the Process of this Court. But it must be set forth by whom the Parties received such Information. Ibid.

Where an Appearance is only irregular, the Appearance will falve the Error in the Process; but where an Order, which occafioned the Appearance, was obtained by Male Practice, the Appearance will not falve the Error in the Process. Ibid.

Where a Solicitor shall be committed for obtaining an Order in an undue Manner

fr

pı

on

gra

beca

Dil

it by

beca

Cou

put fed fi

Char

Virtu

and I

ora .

demu

upon the Stat. 5 Geo. 2. Ibid.

The Defendant having appeared, and taken an Office-Copy of the Bill, is to lay the fame, or a Copy thereof before Counsel, with Instructions for the Answer, who will advise him either to answer, plead, or demur thereto, as the Case requires: Or the Defendant's Attorney may draw the Answer, and then lay it before Counsel to peruse and sign.

Where a Defendant finds himself stinted in Time, so that he cannot put in his Answer according to the ordinary Rules of this Court, as where he cannot answer without Sight of Writings which are in the Country, &c. or if the Bill be for an Account of Goods that are in the Country, and he in London, so that he cannot set forth the Particulars without Sight, in these and many other singular Cases, the Court, on Motion or Petition, will grant such Time to answer as is reasonable; but this ought only to be

where the Defendant incurs not any Difpleasure of the Court, but appears regular-

ly at the Return of the Subpana.

Yet this is usually granted upon the Defendant's submitting to enter his Appearance with the Register; as upon an Attachment, and consenting that a Serjeant at Arms shall issue against him, and if he answers not by the Time allowed him; then the Plaintiff takes a Certificate from the Register of the Defendant's having entered such Appearance. And it is a Motion of Course to obtain an Order for a Serjeant at Arms against the Defendant; and then he must answer and clear his Contempt before he be discharged.

If the Defendant live above twenty Miles from London, he has a Dedimus of Course to put in his Answer the Term following, which he is entitled to pray upon his appearing.

It must be to Plead, Answer or Demur, as the Case requires, and 'tis obtained either on Motion or Petition: But the Court never grants a Commission to demur alone, for the antient Rule was to plead, answer or demur, because a Demurrer is ever look'd upon as Dilatory, and the Court will never indulge it by a Commission in Delay of the Plaintiff, because the Defendant may put in a Demurrer alone, without any Order, figned by Counsel, and which therefore he ought to put in in due Time, and is not to be exculed from it by a Commission to the needless Charge and Delay of the Plaintiff: But by Virtue hereof he may put in a Plea, Answer, and Demurrer, or only a Plea and Answer or a Plea or Answer only; but shall never demur to the whole Bill alone, on having obtained

d

n. ed

nhis

jut

ry,

in

ar-

any

wer

) bo

nere

Obtained such Order as aforesaid: And if the Desendant does put in only a Demurrer after having obtained such Order, such Demurrer will on Motion be discharged with Costs, tho' the Demurrer otherwise might be a good Demurrer. And this special commission is returned as other Commissions are; and six Days Notice of executing thereof is to be given to such one of the Plaintist's Commissioners, as Notice is directed to be given to, of the Day of executing the Commission. But in Strictness, if Notice be given on Monday to execute on Saturday, it may

After a Contempt duly profecuted to a Proclamation returned, no Dedimus is to iffue without Motion and good Caufe to fatisfy the Court touching the Delay.

be good.

fe

d

re

th

in

D

tai

in

the

Co

fio

Col

Sherv

he ha

Clerk

A Dedimus is sometimes made returnable without Delay; but regularly the Dedimus (if the Subpana was returnable the first Day of the Term) ought to be returnable the last Day of the Term. Tho' the Modern Practice is to indulge the Defendant with a Dedimus returnable the first Return of the next enfuing Term. And so if the Subpæna was returnable the last Day of the Term, the Dedimus should be returnable the first Day of the following Term: But this is no fixt Rule, but is Discretionary; for in the two short Terms, and where the Defendant lives a great Distance from Town, he must have a Commission with a longer Return than where the Defendant lives nearer Town. And these Proceedings are generally adapted to the Conveniency of both Parties; and what Time the Defendant shall have, is ulually fettled amongst the Clerks themselves.

Two Commissioners, one on each Side, are sufficient to take an Answer; yet generally there are two on each Side, or two for the one, and one only for the other: And each Side names his own Commissioners.

And no fecond Commission is to be had without special Order of the Court, on good

Caufe shewn, or by Consent.

Before a Commission to take an Answer is issued, the Defendant's Clerk in Court usually calls upon the Plaintiff's Clerk in Court for Commissioners Names, to see the Defendant's Answer taken, or leaves a Note in Writing with him for that Purpose, and upon receiving Names, he proceeds to make out the Commission: But if the Plaintiff's Clerk in Court refuses to give fuch Names, the Defendant may on Motion or Petition obtain an Order to compel him to give Names in two Days, or in Default thereof, that the Defendant may be at Liberty to have a Commission directed to his own Commis-The Forms of which Petition and Commission are as follow.

> Between A. B. Plaintiff, C. D. Defendant.

To the Right Honourable the Master of the Rolls.

The bumble Petition of the Defendant,

Sheweth,

t

a

n n.

t-

5;

15

es.

NO

THAT the Plaintiff hath exhibited his Bill against your Petitioner, to which he hath appeared, and your Petitioner's Clerk in Court hath often called on the Defendant's Of Appearing and Antwering, &c.' fendant's Clerk in Court for Commissioners Names to see your Petitioner's Answer taken, which he refuses to give to your Petitioner's Clerk in Court.

That inasmuch as your Petitioner lives in the County of E. about—Miles distant from the Court, and is not in Contempt, nor has had any Order for Time to answer

the faid Bill;

Your Petitioner therefore humbly prays your Honour, that he may be at Liberty to take out a Commission for taking his Answer to the faid Plaintiff's Bill, Returnable - And that the Plaintiff's Clerk may in two Days after Notice hereof give to your Petitioner's Clerk in Court Commissioners Names for taking your Petitioners faid Answer; or in Default thereof, that your Petitioner may take out such Commission directed to his own Commissioner; And that all Process of Contempt against your Petitioner for want of his Answer may be stayed in the mean Time.

And your Petitioner Shall ever pray, &c.

th

m he

fte

ab

# Commission to take an Answer.

GEOR GE the Second, by the Grace of God, of Great Britain, France and Iteland King, Defender of the Faith, and so forth, To E. F. G. H. J. K. and L. M. Gents. Greeting. Whereas A. B. Gent. Complainant hath lately exhibited his Bill of Complaint

Of Appearing and Answering, &c. plaint before us in our Court of Chancery against C. D. Gent. Defendant: And whereas we have by our Writ lately commanded. the faid Defendant to appear before us in our faid Chancery at a certain Day now past to answer the faid Bill: Know ye that we have given unto you, any three or two of you, full Power and Authority to take the Answer of the faid Defendant to the faid Bill; and therefore we command you, any three or two of you, that at fuch certain Day and Place, as you shall think fit, you go to the faid Defendant, if he cannot conveniently come to you, and take his Anfwer to the faid Bill on bis Corporal Oath, upon the Holy Evangelists to be administred by you, any three or two of you, the faid Answer being diffinctly and plainly wrote upon Parchment: And when you shall have so taken it, you are to fend the same closed up under the Seals of you, any three or two of

you, unto us in our faid Chancery

Wheresoever it
shall then be, together with this Writ. Witness Ourself at Westminster the—Day of
—in the—Year of our Reign.

Here put the Master of the Rolls and Six

Clerks Surnames.

-

ſ.

id

at

ch

m-

of for

Vc.

e of

fre-

nts.

ain-

om-

Indorse it; By the Court.

Note; If the Defendant is a Nobleman, the Words above in different Characters are to be left out, and the Words upon bis Honour inferted in their Stead.

The Answer being ingross'd on Parchment with two Shillings Stamps; if taken here in Town, must be sworn before a Master in Chancery; or if the Desendant lives above twenty Miles from London, he may

either

Of Appearing and Answering, &c. either come up to Town and put in his Answer here, or it may be taken by Commissioners, a Commission as aforesaid being first duly issued for that Purpose; Notice of executing which Commission must be given in Writing, in Manner following, viz.

y la

an

T

try

16

W

Lo Ho

tak

und

Stourt

be ex

and it

ought folved

to answ

he mul

Att, 2

This f

W E whose Names are hereunto subfcribed having received a Commission issuing out of the High Court of Chancery, to us and others directed, to take the
Answer of C. D. Defendant, to the Bill of
Complaint of A. B. Gent. Complainant;
we do hereby give you Notice, That we
intend to execute the said Commission on
the—Day of, &c. at the House of,
&c. at which Time and Place you, with
your Commissioners, may be present if you
please. Given under our Hands this—
Day of, &c.

To Mr. C. D. E. F. G. H.

The Commissioners and Desendant being met together pursuant to such Notice, one of the Commissioners reads over the Answer; tho' for the most part 'tis not read over to the Desendant at the Time when the Commissioners meet together, but before by the Desendant's Solicitor; but one of the Commissioners says to the Desendant;—You have heard the Answer read, and do exhibit it as your Answer to the Bill of Complaint of, &c. To which he answers Tes: Then one of the Commissioners administers the Oath to the Desendant, (laying his Right

Of Appearing and Answering, &c.
Right Hand on the Bible or Testament)
which is as follows.

Y O U shall swear, that what is contained in this your Answer, as far as concerns your own Act and Deed, is true of your own Knowledge; and that what relates to the Act and Deed of any other Person or Persons, you believe to be true.

So belp you God.

And the same Oath is administred when an Answer is sworn in Town.

Observe that now a Defendant here in Town, as well as a Defendant in the Country, generally signs his Answer.

By an Order of the House of Lords in 1640, the Lords of the Parliament, and Widows and Dowagers of such Temporal Lords, shall answer upon Protestation of Honour only.

The Answer of a \* Peer or Peeress is

taken upon their Honour.

9

13

1-

36

10-

ou |

ni-

m-

:5:

ers

nis

ht

The Answer of a Corporation is taken under their Common Seal.

The Answer of a Quaker is taken upon his solemn Affirmation and Declaration.

Sir Thomas Meers exhibited a Bill against the Lord Stourton, and it was order'd, That the Lord Stourton should be examined upon Interrogatories touching his Title; and it was objected, That he being a Peer of the Realm, ought to answer upon his Honour only; and it was resolved by Harcourt, Lord Keeper, that where a Peer is to answer to a Bill, his Answer put in upon his Honour is sufficient; but where a Peer is to answer Interrogatories, to make an Affidavit, or to be examined as a Witness, he must be upon his Oath. Sir Tho. Meers, v. Ld. Stourman, 2 Salk. 512.

The Answer being taken, is to be annexed to the Commission; and then the Caption is to be made at the Foot of the Answer, thus:

THIS Answer was taken, and the above-named C. D. Defendant was duly sworn to the Truth thereof upon the Holy Evangelists, at the House of E. R. situate in the Parish of G. in the County of H. on the—Day of—in the—Year of the Reign of his Majesty King George the Second, and in the Year of our Lord 1740, by Virtue of the Commission hereunto annexed, before us—

be

oi

M: be

f t

rece

Car

Cou

nd

Fa

A.

Th

ay t

rs i

ne Bi nd Y ame

nd th

info

ho go

gby

d thit

ook:

To this the Commissioners fign their Names

Note; The Caption is to be properly va-

ried according to what is taken.

And the Caption being made and subscribed in this Manner; the Commission is indorsed about the Middle, thus:

The Execution of this Commission appears in a certain Schedule, or certain Schedules (if more than one Skin) bereunto annext.

And underneath the Commissioners are to fign their Names:

If there be Schedules, they are all to be annexed to the Commission; and then the Commission is to be made up and sealed, and directed to the Clerk in Court: And when

Of Appearing and Answering, &c. he receives it, it is to be indorfed in Manner following:

23 Fanuary 1740. Upon the Oath of A. B. at the publick Office before

But if the Bearer or Messenger be sworn at any other Place, the Indorsement must

be properly varied.

Then the Bearer is taken to the publick Office, or other Place, before one of the Masters, where he swears, That be received be Commission from the Hands of one or more f the Commissioners therein named, and that t bas not been open'd nor alter'd fince be fo received its

But if one of the Commissioners has the Carriage thereof, and delivers it feal'd, as foresaid, into the Hands of a Clerk in Court, 'tis always accepted without Oath,

nd indorfed thus:

10 10.

7111-

ain

he-

988

.

re to

to be n the

, and

be

January 23, 1740. Received by the Hands A. B. one of the Commissioners.

These Things being done, the Answer ay be open'd; and the Clerk in Court enis it in his Cause-Book, annexes it to e Bill, marks it at the Top, with the Day d Year when filed, and fubscribes his ame at the Bottom, on the Left-Side, d then files it with his Six Clerk, of which informs the Plaintiff's Clerk in Court, no goes into his Six Clerk's Study (it beby the Defendant's Six Clerk transmitthither) and takes it from thence, first when aking an Entry thereof in the Six Clerk's ook: But if the Answer of another Defen-Z

dant to the same Bill be filed before, he then proceeds as aforesaid, save that in this Case he does not annex the Answer to the Bill, but only writes at the Bottom of the Answer, Bill, with another Answer to A. i. e. the Plaintiff's Six Clerk, filed such a Tens with B. i. e. the Desendant's Six Clerk.

But observe, that the no Answer is strict.

ly reputed such till filed, nor to be filed until the Costs of Contempt for not answering are paid, yet they may be, and are from

f

0

P

of

M

fw

80

wh

the

a R

paf

fhal

eith

A

forth

Bill

Defe

to let

fhe

of the

noug

Plaint

o tal

them 1

o pro

Vitne

The

nove t

er; be

quently filed before.

An Answer in general, must confess or avoid, or traverse or deny the material Part of the Bill: It must contain nothing scandalous or impertinent; it must be under Counsel's Hand, (unless it is taken by Commission in the Country, and then it may be Iworn and filed without Counsel's Hand thereto) and upon Oath, except in the Cale of Peers, &c. And an Answer to a Matter charged as the Defendant's own Fact, mult regularly be without faying, To his Remembrance or Belief, if laid to be done with in seven Years before, unless the Court upon Exceptions taken, shall find specia Cause to dispense with it. And as to the Fact of another, which he does not certain ly know, he ought to fay, He bas beat and conceives, or believes it to be true; of that be does not conceive or believe, &c. and ought not to fay only, that be has beard.

If the Defendant deny a Fact charged the Bill, he is to traverse or deny it (as the Case requires) directly, and not by Way on Negative pregnant; as if he be charged with the Receipt of a Sum of Money, he muldeny or traverse that he hath not receive that

that Sum, or any Part thereof, or elfe fet forth what Part he hath received, and deny the rest! And if a Fact be laid to be done with divers Circumstances, he must not traverse or deny it literally, as laid in the Bill. but must answer the Point of Substance pofitively and certainly. Vide Clarendon's Orders, 18 Car. 2. He is not obliged to anfwer to any Matter, the Confession whereof might subject him to any Forfeiture or Penalty at Law. But Bills for Difcovery of Writings and Evidences, &r. in pure Matters of meum & tuum, ought to be answered. A Counsellor, Clerk in Court, of Solicitor, are not compellable to answer what they know of their Client's Causes, as they are such. I Chanc. Ca. 277. Neither is a Referee, where it is agreed, that what passes between them upon the References fall not be disclosed, or made use of on either Side. Ibid.

An Answer ought not ordinarily to set forth Deeds in bac verba; and though the Bill prays they may be set forth, yet if the Desendant in his Answer says, he is ready to let the Plaintiss have Copies of them; or she do not say so, but sets forth only Part of them, it is sufficient, and will be well mough; and the Court will order that the Plaintiss have Liberty, at his own Charge, to take Copies of them, without sending them to a Master; or order the Desendant of produce them, on the Examination of Witnesses, &c. Ord. in Canc. 121, &c.

4

th

rt

cia the

earl

or

d.

ed i

s th

ay o

wit

mu

eive

tha

The Defendant may, without Notice, Amendment, nove to amend his Answer in a small Mater; but if it be in a material Point, he

Z 2 m

Df Appearing and Answering, &c. must give Notice, and the Court sometimes grants it, especially upon an Affidavit that the Defendant was surprised therein. 1 Chan. Ca. 29.

But observe, that there are no settled Rules for amending of Answers; but it is

discretionary in the Court.

There are no certain Rules about Amend.
ments of Answers, for those Amendments
are in the Discretion of the Court. Wood.

gate and Fuller, Barnard. 51.

An Answer may be amended even after a Prosecution for Perjury commenced against the Defendant, for what he has sworn in his Answer, where it plainly appears to be a mere Mistake. *Ibid*.

Where an Answer not allowed to be amended, barely upon the Affidavit of the

Defendant. Ibid.

Where the Defendant has examined Witnesses, the Court will not give Leave, that the Plaintiff shall amend his Bill, by add-

ing Parties. Barnard. 223.

Where in a joint and several Answer by A. and B. if A. for himself answers, and B. says he has perused the Answer of A. and believes it to be true, if B. be charged with nothing of his own Knowledge, such a relative Answer is sufficient; but it is otherwise where the Defendants answer severally.

Sufficient to give a full Answer to the Thing in Demand. Pasch. 13 Car. 2. Randall and Head, Hard. 188. But an Executor must answer as to a Discovery of Assets, though he denies the Debt. Ibid.

Saying he believes and hopes that a Debt is paid, when sufficient. Vide I Vern. 140.

That

f

fa

C

W

fw

abr

hath Thin

and Prete

Ar iff's

lant (

nifs i

But

Cause is Bi

e ple Decree

ng und ne Bil

ut on

That he received no more to his Remembrance, fufficient. I Vern. 470.

In a fecond Answer the Defendant must answer the Exceptions taken to the first.

1 Chanc. Ca. 60.

A Defendant may, in some Cases, be held down to his Answer; but not where a Perfon, to avoid a Sequestration, own'd he was satisfied a Debt. Vide 1 Vern. 448. 1 Chan. Ca. 154.

A Purchaser not bound by an improvident Offer in his Answer. Mich. 1608.

Watkins and Hatchet.

at

d-

by

B.

and

vich

ela-

her-

ally.

the

ndall muf

ough

Debt

140.

Tha

May charge and discharge himself by Anfwer. Vide 2 Vern. 194. Cafes in Equity abridg'd, Title Account, Letter B.

# Of Disclaimers.

A Disclaimer is, where a Defendant upon A Oath by his Answer denies that he hath, or claims any Right or Title to the Thing demanded by the Plaintiff's Bill; and disclaims, i. e. renounces all Claim or Pretence of Title thereto.

And in fuch Case, if it appear the Plainiff's Bill was exhibited against the Defenant only for Vexation, the Court will dif-

his it, and give Costs against him.

But if the Plaintiff had any probable lause or Reason to induce Ism to exhibit is Bill against such Defendant, he may, if e pleases, by Motion or Petition, pray a Pecree against the Defendant, and all claimig under him fince the Time of exhibiting he Bill; but this I think is feldom decreed ut on Payment of the Defendant's Costs.

If

If one be named a Defendant in a Bill among other material Defendants, who no ways pretends any Right to the Matters in Question, and he thereupon disclaims, he may, after such Disclaimer, upon a Motion or Petition to that Purpose, be examined as a Witness in the Cause; for it shall be presumed his Name was inserted in the Bill, without other Cause than only to take away his Testimony.

And where a Defendant disclaims generally to all the Matters in the Bill, the Plaintiff is not to reply; if he does, and serve the Desendant with a Subpana to rejoin, the Desendant may have Costs against him for

the Vexation to be taxed.

But if the Disclaimer be only to Part of the Matter in Question, but as to the other Part there is an Answer, in such Case there may be a Replication to that Part that contains the Answer.

CHAR

Of

or

in

ed

mo

to,

ter

Inte

the and Anfi trans a gest his of fwer An Isaft the Isthem figned dant's

at his with t

#### CHAP. VII.

Of Exceptions to Answers and Reports; of further or better Answers; with Hearings upon Bill and Answer.

Exceptions are the Allegations of a Party in Writing, alledging that some Pleading or Proceeding in a Cause is insufficient, or not perfectly answered, in a certain Point or Points particularly expressed and set forth in such Exceptions, and they must be signed by Counsel.

If an Answer be insufficient in one or more Points, the Plaintiff may except thereto, and force the Defendant to put in a bet-

ter Answer.

But if the Answer be good to a common Intent, the Plaintiff must reply, and prove the Matter of his Bill to be true, if he can, and not insist upon the Insufficiency of the Answer; but this must be intended of Things transacted publickly, whereof there may be a general Cognizance; for of Matters done by the Defendant privately, or resting in his own Knowledge only, he ought to answer particularly and certainly.

And these Exceptions are drawn, or at least perused and signed by Counsel: And the Practice in filing Exceptions touching the Insufficiency of Answers, is to deliver them by the Plaintiff's Clerk in Court, so signed on unstamp'd Paper to the Desendant's Clerk in Court, or his Clerk or Agent, at his Seat, first marking them at the Top with the Day of the Month and Year when

deli-

2 4

### Of Exceptions, and

delivered; and this is called Filing Excep-

But no Exceptions can regularly be taken to an Answer after Replication; for thereby the Answer is admitted sufficient; yet in some Cases the Court will order the Replication to be withdrawn, and the Exceptions received.

1

F

P

th

if

fu

or

fte

be

re

Da

mi

af

ref

ren

or o

arg

atte

he c

in S

two

Cou

fter

to be

War

a Re

most

If an Answer be filed in Term, the Plaintiff must deliver his Exceptions the same Term, or within eight Days after: But if the Answer be filed in the V-acation, the Plaintiff hath eight Days after the Beginning of the next ensuing Term to put in Exceptions; and they cannot be put in afterwards in either Case, without an Order or Confent of the other Side, the Clerk in Court refusing to receive them; which if he does, an Order may be obtained either on Motion or Petition, and ferved, and the Exceptions delivered at the fame Time: And the Defendant has from the Delivery of the Exceptions eight Days to confider whether he will fubmit to answer; and if he does fubmit, he must pay twenty Shillings Costs; but if not, an Order may be obtained to refer them to a Master to look into the Plaintiff's Bill and Defendant's Anfwer, and the Plaintiff's Exceptions taken thereto, and certify whether the Defendant's Answer be sufficient in the Points excepted to, or not. And if the Defendant do, within eight Days after delivering Exceptions, fubmit to answer and do amend his Answer (if he lives in London, or within ten Miles thereof) in eight Days after he has fubmitted to answer; but if he lives twenty Miles, or further, from London, he ufually

usually craves a Commission for taking his further Answer, and has till the first Day of the ensuing Term to take and return his Answer; and such second Answer being filed, and twenty Shillings Costs paid to the Plaintiff's Clerk in Court for Submitting to put in a better Answer, and such second Answer being sufficient, the Plaintiff may then go on and reply to fuch Answer; but if the Defendant refuses to submit to answer fuch Exceptions, the Exceptions, on Motion or Petition, are to be referred to a Mafter; who is to certify whether the Answer be sufficient or not. The Plaintiff cannot refer Exceptions to a first Answer till eight Days after they are delivered, and not fubmitting to put in a further Answer: But on a fecond infufficient Answer they may be referred immediately.

The Plaintiff must serve the Defendant with a Warrant to attend on these References, which is to be ferved personally, or on his Clerk in Court, two Days before arguing the Exceptions; and if he does not attend, which generally happens, the Plaintiff may take out another Warrant; and if he does not attend then, the Master may, in Strictness, on Oath of serving the said two Warrants on the Defendant's Clerk in Court, make a Report ex parte, of the Insufficiency of the said Answer: But the Mafler will sometimes Order a third Warrant to be taken out, and if he fails then to attend, then, on Oath of serving the three Warrants, as before, the Master will make a Report-as before; but the Defendant for most part appears.

.

15

1-

d

n

ne

he

lly

The

The Insufficiency appearing on the Ex-

Exceptions can be put in.

No new Commission by the strict Practice of the Court, shall be awarded for taking any second Answer unless by Order, on Assidavit made of the Party's Inability to travel, or other good Cause to satisfy the Court touching the Delay, and first paying the Costs of such insufficient Answer; or by the Consent of the Plaintiss's Clerk for expediting the Cause; but no such second Commission is usually consented to.

270

CE

Pl

tio

Co

fen

of S

a I

and

get

cello

And

and

Side

Side for a

B

less e

is oft

the R

Depo

the E

are al

Anfw

If the first Answer be reported insufficient, the Defendant is to pay forty Shillings Costs; and if taken in the Country by Commission, two Pounds ten Shillings: Three Pounds for a fecond Answer; four Pounds for a Third; sive Pounds for a fourth, & And the fourth Answer being reported insufficient, the Plaintiss may move, on the Master's Report siled, that the Defendant may stand committed; and the Defendant shall not be discharged till he has put in a full and sufficient Answer, and paid the Costs of the Contempt.

But if the Answer be reported sufficient, the Plaintiff shall pay the Defendant forty

Shillings Costs.

If the first Answer be reported insufficient, the Desendant, if he answers again without excepting to the Report, must answer all the Points reported insufficient, although the same exceed the Charge in the Bill; and the Plaintiff, in such Case may also, by Motion or Petition, obtain an Order to amend his Bill without Costs, amend-

#### further Answers, &c.

ing the Defendant's Copy of the Bill.

1 Chan. Ca. 60. Eq. Ab. 35. cap. 6.

And if a first or second Answer be insufficient, Process of Attachment, &c. for want of such Answer, shall go on as it was before. I Chan. Ca. 238. Eq. Ab. 351. cap. 6.

When a Defendant is in Contempt for want of an Answer, and an insufficient Answer is put in, that is no Answer at all; the Plaintiff is not to begin his Process de novo, but go on regularly from the last Process. Lady Abergavenny v. Lady Abergaven-

ny, Select Cafes in Chan. 5.

1

6

t,

y

ci-

n-

al-

the

nay Or-

nd-

ing

When an Answer is apprehended sufficient, and the Exceptions thereto invalid, the Plaintiff, notwithstanding, may take Exceptions to the Master's Report, figned by Counsel, and file fuch Exceptions with the fenior Register, on a double Sixpenny Sheet of Stamp-Paper, upon which you must make a Deposit of five Pounds with such Register: and you may, on fuch Register's Certificate, get an Order, upon Petition to the Chanallor, for fetting them down to be argued. And if the Party excepting does not Petition and obtain fuch an Order, then the other Side may doit; and in the mean Time both Sides may prepare their Briefs for Counfel, for arguing the Exceptions to the Report.

But the Master's Report is conclusive, unless either Party take Exceptions to it, which is often done on depositing five Pounds with the Register, if it be a general Report, which Deposit must be paid to the other Party if the Exceptions are over-ruled; but if they are allowed, then to him who made the Deposit, and on Reports touching Sufficiency of Answers, ten Shillings, for every Exception or distinct Branch of an Exception, which on arguing shall be over-ruled as frivolous and impertinent; and for such as shall be waved and not opened, sometimes ten Shillings. And these Sums shall be paid over and above the Deposit, if the Report be affirmed; or out of the Deposit, tho' the Report be altered.

But it is discretionary in the Court to order more; and on arguing the Exceptions, the Court sometimes orders that each Party

bear his own Costs.

If the Exceptions, or any of them, are upon arguing thereof, after the Hearing, held good and sufficient, the Court, in that Case usually orders the Master to review and alter his Report in those Particulars.

Note; If Exceptions are found against a Defendant upon an Answer, he must pay the Costs, and put in a better Answer; and the Plaintiff may have one Subpana for Costs, and another to make a better Answer, which are always returnable immediate; and this last Subpana is usually served upon the Desendant's Clerk in Court, and the other must be served personally on the Desendant, and the Costs demanded of him. And if the Exceptions be upon another Matter, the Court determines them upon hearing them argued; or sends the Parties back to the Master to review his Report.

After Exceptions taken to an Answer, and the Defendant submits to put in a farther Answer to those Exceptions, or the Master reports the Answer to be insufficient, and the Defendant puts in a second Answer, no new Exceptions can be taken to the second Answer; but if the Plaintiff is advised

that

R

E

In

cept

four

prop

that the fecond Answer is also insufficient, he may either move or petition the Court, and obtain an Order that it may be referred to the Master to see if the second Answer be sufficient in any the Points excepted unto, or not; and if the Master reports the second Answer insufficient, the Defendant must put in a third Answer, unless he excepts to the Master's Report, as before.

Exceptions may be likewise taken to a Report, either in Lunacy or Bankruptcy.

Exceptions to an Answer for Insuffici-

Between A. B. Plaintiff, C. D. Defendant.

In Chancery. of the area of the detailed

d

d

19

et

ies

er,

ar-

la-

nt,

er,

fe-

fed hat Exceptions taken by the Complainant to the Answer of the said C.D. Defendant, put in to the said Complainant's Bill.

FIRST, for that the faid Defendant hath not fet forth) the Matter you except to, and in like manner the third, fourth, and as many as shall be thought proper.)

In all which Particulars the Plaintiff excepts against the said Defendant's Answer, as imperfect, evalive and insufficient, and therefore prays, that the said Defendant may put in a better Answer thereunto.

# Of Hearings upon Bill and Answer, &c.

A Cause may be set down to be heard I upon Bill and Answer, provided there be Matter of Equity admitted by the Answer sufficient to found a Decree upon: So that when the Desendant hath answered, the Plaintiff ought to advise with his Counsel concerning the Answer, and if he finds that upon the Answer alone, without farther Proof, there be sufficient Ground for a Decree, then to proceed to hearing upon Bill and Answer, without farther lengthering the Cause.

And if it be needful to prove one, or a few particular Points of the Bill, and to falfify one or two Matters in the Answer, the Plaintiff ought to examine to those Points only, and not to draw in Pleading or Proofs, any more than those necessary Points, on

Pain of Costs.

But note, at this Time there very rarely is filed a Special Replication, but only a General Replication to the Answer; and the at the Plaintiff's Discretion what Witnesses to examine: But if he examines to more Points than necessary, the Court considers that at the Hearing, and perhaps may make the Plaintiff pay Costs for examining to what is unnecessary.

But if the Plaintiff reply to an Answer, and without Rejoinder, or Rules given for producing Witnesses and passing Publication, brings the Cause to Hearing, the Answer shall be taken wholly true, as if there had been no Replication; for the Defendant's

Oppor-

tl

1

th

T

G

ing

aft

hea

Bill

the

by 1

Equ

Cou

be o

mitte

lars o

denci

the A

cord,

which

many

## Of hearings upon Bill, &c.

Opportunity of proving his Answer is taken

from him. Vide I Chan. Ca. 21.

Where the Plaintiff disclaims, or doth not answer, but pleads or demurs, the Plaintiff is not to reply without arguing the Plea or Demurrer; and if he serves the Defendant with a Subpana to rejoin, the Defendant may have Costs for the unjust Vexation.

If a Deed or Will is confessed by the Answer, and referred to, there ought to be no
Replication; but to proceed thereupon to a
Hearing on Bill and Answer. And if a Trust
is confessed by the Answer, there needs nothing farther but to go to Hearing; and
the Court will refer the Accounts of the
Trustee to be stated by a Master; and when
that is done, decree a Discharge of the
Trustee on his paying the Balance: The
Costs between the Parties in that Case being usually reserved by the Court until
after the Master shall have made his Report.

If a Subpana to rejoin be not served, &c. though it be sued out, the Cause may be

heard on Bill and Answer.

5,

n

ly

1

tis

Tes

ore

ers

ake

to

wer,

for

ion,

wet

had

ant's

ppof-

The Method of hearing a Cause upon Bill and Answer, is generally thus: After the Substance of the Bill has been opened by some junior Counsel, and the Matter of Equity thereof duly represented to the Court, the Answer of the Desendant is to be opened by his Counsel, and must be admitted true in all Points, as to the Particulars charged in the Bill; and no other Evidence is to be given than what arises from the Answer itself, or being Matter of Record, to which the Answer refers, and which is provable by the Record: But in many Cases, though the Cause require no Witnesses,

Witnesses, yet it may be necessary for the Plaintiff to reply, &c. whereby the Desendant will be put upon Proof of his Answer, and the Plaintiff admitted to prove the Matters of the Bill.

Where a Cause is brought to Hearing, and there wants proper Parties, the Court will order the Plaintiff to amend his Bill, and pay the Costs of the Day to those Defendants that were brought to Hearing; which if brought on before my Lord Chancellor, is five Pounds Costs; and if at the Rolls, is three Pounds six Shillings and eight Pence.

Note; That an Order of Dismission, is duly signed and involled, will be a good Plea in Bar of a new Bill brought for the same Matter.

with the west porcess might no were

it do tigo coty the Case may be

Open Attended the part hours with the

- ANTIL TO DET ESSES LATTING I DE MONTE

- 12 Table to be been all to be real had

· 24 loop are breefed to made the

AND SHOP IN THE PARTY OF THE PA

. . .

parogochosh and alice best consequents at

CHAP

fo

in

to

Pie

tha the

ed, er o

cess;

Party nicati A

Merit Bill,

f fu

wer.

ies, F

ing v

#### CHAP. VIII.

Of Pleas, Answers, and Demurrers.

A PLEA in Equity is a Sort of special Matter pleaded by a Desendant to a Bill, or to some Part thereof, shewing and relying upon one or more Facts set forth in the Desendant's Plea, as a Cause why the Plaintist ought not to be relieved in some Matter contained in his Bill, in Barto any Relief or Discovery sought after and prayed by the Bill.

And Pleas in Equity are of three Kinds, viz. 1st, a Plea to the Jurisdiction; 2dly, a Plea to the Person; 3dly, a Plea in Bar.

A Plea to the Jurisdiction must shew that the Lands lie out of the Jurisdiction of the Court, that the Matters were transacted, or that the Party lives out of the Power of the Court, and the Reach of its Process; as out of the Kingdom, or in a County Palatine, &c.

A Plea to the Person, must shew that the Party is disabled by Outlawry, Excommu-

ication, &c. to be relieved.

A Plea in Bar, as it goes more to the series, and often causes a Dismission of the series, and often causes a Dismission of the series, the Court will sometimes on arguing of such Plea, order it to stand for an Answer. And Pleas of this Kind are various; a Acts of Parliament, Fines and Recoveries, Releases, former Decrees, &c. purchaing without Notice; but Notice must be thied, 1 Vern. 179. 2 Vent. 361. S. P. by A a way

Of Pleas, Answers, and Demurrers, way of Answer, and not by way of Plea. 2 Chan. Ca. 161.

Though a Plea in Bar be allowed, yet the Plaintiff may reply to the Truth of it, and put the Defendant on proving it, and may except to any other Part of the An. fwer. Gilb. 184.

And observe, that if there be any Fraud alledged in the Bill, it must be denied by way of Answer, and not by way of Plea

0

fo

if

C

he

ret

De

or wit

it 1

The

plea

be r

in a

Ord.

N

in a

Dem ftanc

requi

the I

to the

s reli

s inti

endan urrer

1 Vern. 185.

Note; Plea of A Plea to the Jurisdiction, or in Disabi.
Outlawry must lity of the Person, must be upon Oath. And be upon Oath. all Pleas and Demurrers must be signed by 2 Vern. Ca.
Counsel, and also Pleas of Matters of Region of a Plea of cord.

Outlawry, with the Common Averment of the Identity of the Person; for it may come in on the other Side to aver, that he was not the same Person. *Iden* 182. In order to avoid Pleas of Outlawry, the Plains may make all those that have Outlawries against him Defendants.

A Plea of Privilege must be put in upon Oath. 2 Vern. Ca. 80.

And Pleas in Bar of Matters in Pais, are to be upon Oath, except the Matter of the Bar be fingle, and so full a Bar that the Bill requires no further Answer; the whole is generally set forth by way of Answer and then so much of it as goes in Bar being relied upon, by way of Plea; and this is in titled, The Plea and Answer of the Definition.

Or the Defendant may plead the Matter proper in Bar, and then add, by way answer, what further is necessary as a Fraud, &c. charged in the Bill, 2 Chan. Co. 161.

Of Pleas, Antwers, and Demurrers.

If the Defendant's Time for answering is out, and he upon Motion or Petition obtains further Time to answer only, without saying that he may be at Liberty to plead, answer or demur to the Plaintiff's Bill; he shall not in this Case (tho' he may afterwards, upon advising with Counsel, find Reason to plead or demur) put in a Plea or Demurrer without obtaining an Order for that Purpose.

A Plea cannot be taken upon a general Commission to take an Answer only: But if the Defendant obtain an Order for a Commission to plead, answer, or demur, he may take and return a Plea and Demurrer by such Commission, or an Answer and

Demurrer, or an Answer only.

100

the

the

wer

ein

is indefen

atta

ay o

77. C

After a Proclamation returned, no Plea or Demurrer can be put in or returned without Leave of the Court; but if put in, it will be discharged on that Suggestion: Therefore the Desendant who designs to plead or demur, should take Care that he be not guilty of Delays; and would do well in applying to Counsel immediately. Vide Ord. Chan. 121.

Note; Where there are Matters alledged in a Bill to which the Bar of the Plea or Demurrer reaches not, or some Circumfances relating to the Matter in Bar that require a particular Answer; as Fraud, &c. the Defendant must answer upon Oath as to those, and then so much as goes in Bar is relied on by Plea or Demurrer; and this intitled, The Plea and Answer of the Defendant; or, The Plea, Answer, and Demurrer of the Desendant.

Aa2

Df Pleas, Antwers, and Demurrers.

If the Defendant is doubtful, whether if he plead the Matter of his Defence, the Plea will be allowed by the Court; he may shew the whole Matter by Answer, and then insist and rely on it, almost as if he had pleaded it, only he is not to call it his Plea, nor have the Benefit thereof till

Hearing.

If after a Suit commenced at Common Law, or any other inferior Court, a Bill shall be exhibited in this Court to be relieved for the same Matter, the Dependancy of a former Suit shall be admitted as a good Plea, and the Defendant is not to be put to Motions for an-Election or Dismission; and that Plea shall be proceeded in a in Case of a Plea of a former Suit depending in this Court for the same Matter.

Where a Defendant pleads the Pendance of a former Suit in another Court for the same Matter, if it is in any of the Court of Ireland, or here in England, on coming in of this Plea, the Plaintiff may and ought to obtain a Reference to the Master, and to procure his Report, that the format Suit is not in the same Matters; and in such Case the Plea is to be over-ruled, of the Defendant may bring on his Plea; and if 'tis well pleaded, and both Suits appear to be for the same Matter, the Plea is a ways allowed.

Where the Plaintiff apprehends the Plato be good, tho' not true, he may reply the Plea, and take Issue upon it, and proceed to examine Witnesses as in Case of Answer; and in this Case where he replied to a Plea before it comes to be argued, to always an Admission of the Plea as if

may Lord W

a

th

B

Pl

rul

Re

ter

of c

aga

Anf

be a

upor A

with

of th

If

of a I

Df Pleas, Answers, and Demutrers. had been argued and allowed, only the Defendant is put to the Proof thereof, and so he may when 'tis argued and allowed; and if he proves his Plea, the Bill must be dismiss'd on hearing. So if the Plaintist amends his Bill before he argues the Plea, 'tis an Admission of the Goodness of the Plea, as if the same had been allowed on arguing. So likewise of a Demurrer.

If the Defendant put in a Plea, which on Perusal the Plaintiff's Counsel apprehends will not hold good, then when the Defendant hath enter'd it with the Register (which must be in four Days after filing) and after an Order is obtained for procuring the same to be set down to be argued before the Lord Chancellor; you may prepare your Briefs of the Bill and Plea, and get your

Counsel ready for arguing.

But if a Defendant does not enter his Plea within four Days after filing, it is over-ruled of Courfe, and the Plaintiff, on the Register's Certificate of its not being entered, may take out a Subpæna for Costs as of over-ruling a Plea, and another Subpæna against the Defendant for making a better Answer: And the same shall not afterwards be admitted to be set down or debated, unless upon Motion it shall be ordered by the Court.

All Pleas in general ought to be entered with the Register four Days after the filing

of the Plea.

nce

urt

fter

me

d i

20

ppea

is a

ply

d pro

of a

d, 't

s if

If the Defendant does not petition to fet down the Plea to be argued, the Plaintiff may petition and obtain an Order from my Lord Chancellor for that Purpose.

When a Reference is made to a Master, of a Plea of the Pendancy of a former Suir

A a 3

of Pleas, Answers, and Demutters, for the same Matter, if the Master reports, that both Bills are for the same Matter, the Plea shall be allowed, and the Party is intitled to Costs, and the Plea in such Cases, cannot be set down to be argued; for then there would be two Dilatories; but the Plea is ipso facto over-ruled; and thereupon the Plaintiff takes out a Subpana for sive pounds Costs, in like Manner as upon the arguing of a Plea. Vide Barnard. 85. Huggins and The Tork Buildings Company.

The Defendant who pleads ought to be careful in the Caption thereof; for if the Commissioners return, This Answer was taken, without the Words, The Answer and Plea of the Defendant was duly taken, and the Defendant was sworn thereto upon his Corporal Oath upon the Holy Evangelists, &c. the Plea will be rejected, because it doth not thereby appear that the Party was ever sworn to the Plea; but the Court oftentimes indulges the Party to amend the Caption, looking on it rather as a Missake of the Commissioners, than a Fault of the Defendant. Vide 2 Chan. Ca. 208.

A Defendant may plead to Part of a Bill, and answer to the other Part; or may plead as to Part, demur to another Part, and answer to the Residue.

Lord Chancellor, set down the Plea to be argued; and if on arguing thereof its allowed, the Plaintiff is to pay five Pounds Costs to the Desendant, to be recovered by Subpana; but if over-ruled, or ordered to stand for an Answer with Liberty to except, then the Desendant pays five Pounds Costs to the Plaintiff: But where the Words

are,

tl

TI

th

te

m

PI

Co

He

Co

Ba

bro

ligr

Bar

of t

latte

bein

pay

the .

and

Shill

26 C

T

Truf

trust

Plain

other

not be

be the

Matte

and S

Of Pleas, Answers, and Demurrers.

are, To fave the Benefit of the Pleatill Hearing; no other Use I think could ever be made or found by these Words, but that they save the Desendant Costs for overruling his Plea: And this seems to be, where it is doubtful to the Court whether there be not some Equity against the Matter pleaded; and therefore the Court often makes use of these Words. Yet where the Plea is very faulty or nought, though the Court often saves the Benefit thereof till Hearing, yet they declare it shall not save Costs.

Let us in the next Place observe, what hall be a good Plea, and well pleaded.

Outlawry is no good Plea to a Bill brought by an Executor. Killigrew and Kil-

ligrew, I Vern.

١,

d

1:

Y

90

11-

ds

by

ta

X-

ids

ds

re,

A former Bill depending was pleaded in Bar of a second; but the both Bills were of the same Nature and Effect, yet as the latter had some new Matter, Ordered, that being the Plea was good, the Plaintiff should pay the usual Costs of a Plea allowed, but the Defendant to answer the second Bill, and the former Bill dismissed with twenty Shillings Costs. Crosts and Wortley, Mich. 26 Car. 1. 1 Chan. Ca. 241.

The Bill being to have an Account of a Trust, the Desendant pleaded he was intrusted for three Children, viz. for the Plaintist and his two Brothers, and that the other two not being made Parties, he was not bound to answer; for otherwise he might be thrice called to an Account for the same Matter, and the Plea was allowed. Hanne

and Stevens, I Vern. 110.

Aa4

The

Df Pleas, Antwers, and Demurters,

The Plaintiff intitles himself as Admini. strator; the Defendant pleads the Plaintiff is not Administrator; it was objected, this was a negative Plea: Per Cur. Allow the Plea, it is a good Plea in Abatement at Law. Win and Fletcher, I Vern. 473.

f

fi

fi

M

W

ble

Se

to

the

the

nie

in ( 8c.

the the

und Exe

betv

fuch 778.

T

was Eftar

Bill t

eleme Tena

ed,

by w or L

might

at La

Tenar

that c

life d

A Purchaser must plead that he had no Notice. Creffet and Kettleby, Hill. 1681.

I Vern. 219.

A Plea of a Purchase was over-ruled for not answering to the Mortgage. Meder and

Birt, Gilb. 185.

Two of the Defendants being Officers of the Exchequer, plead the Privilege of the Exchequer; but the Plea was over-ruled, because there was a third Defendant, who had no Right of Privilege. Fanshaw and Fanshaw, Trin. 1684. 1 Vern. 246.

A Decree was in the Court of Exchequer against Tenant for Life, to hinder him from committing Waste, which Decree was founded on a Deed of Settlement and on a Bill in Chancery to fet that Ded aside, the Desendant pleaded the Decree if the Exchequer, but was over-ruled. Wing and Wing & al, Modern Cases in L. & B. 109.

If a Bill be brought for an Account of the Profits of Mines, and the Defendant pleads a special Act of Parliament which gives an exclusive Jurisdiction of all Matters arifing within the Mines to the Courts of A. but does not aver there is a Court of Equity, there the Plea will be over-ruled. Strong

and Little, I Vern. 58.

If a Bill is brought to be relieved upon a Purchasers Truft, and charges the Defendant with Notice 9.011

without Notice. Eq. Ab. 333.

32L

Notice of the Trust, before the taking his Conveyance, the Defendant by way of An-(wer (a) may deny the (b) Notice, and (a) Muft deny plead he is a Purchaser for a valuable Con- the Notice, fideration, without shewing what the Con-else his Plea is fideration was, Mich. 15 Car. 2. between not good. 2 Moor and Mahew, I Chan. Ca. 34. Tho' it (6) Where was objected, that five Shillings is a valua- Notice to him ble, tho' not an equitable Consideration. that purchases Sed quære, if the Confideration ought not fall affect the to be fet forth. Purchaser

But where the Bill charges Notice before himself. 1 Cha. the Defendant took his Conveyance, and Ca. 39. the Defendant by (c) way of Answer de. (c) Notice must be denied nies the Notice at the Time of his Purchase by way of Anin Contract, and pleads he is a Purchaser, swer, and not Be this Plea is nought, being founded upon by Plea. 2 Ch. the Answer, which denies only Notice at Ca. 161. the Tine of the Purchase, which may be Incumbrance understood of the Contract, and not of the any Time be-Execution of Conveyances. Mich. 15 Car. 2, fore the Conbetween Moor and Maybew, I Chan. Ca. 34. veyance exefuch Plea was over-ruled, I Danv. 771. S. C. bind him.

778. Eq. Ab. 38, 334.

1

t;

d

ng

of

nt

ch

ers

1.

uiode

n 2

ith

ice

The Plaintiffs being Mortgagees, the Bill was to discover Settlements, and what Estate the Mortgagor had in him; to this Bill the Defendants pleaded two several Setlements, whereby the Mortgagor was only Tenant for Life; but the Plea was over-rued, because the Defendants did not offer, y way of Answer, to admit the Tenant for Life to be dead, that so the Plaintiffs night try the Validity of those Settlements Law; for if they should expect till the Tenant for Life was dead, their Witnesses hat could prove the Fraud might be likeise dead; besides, the Desendants pleaded tho.e

Df Pleas, Answers, and Demutters, those Settlements to be made after Marriage, in Pursuance of Promises and Agreements made before Marriage, and did not set forth what such Promises or Agreements were. Hill. 1682. Lord Keeper & al' ver. Wyld & al', i Vern. 139.

A Plea of a Purchaser for a valuable Confideration over-ruled, because the Defendant did not alledge Seisin and Possession in the Person from whom he bought. Trin. 1684. Travanian and Messe, I Vern. 246.

The Bill was to be relieved touching certain Lands, which the Plaintiff claimed Title to as Heir on the Part of his Father: The Defendant pleaded, that the Mother was the Purchaser of those Lands, and that the Defendant was Heir on the Part of the Mother; but it not being pleaded that the Defendant was Heir of the whole Blood to the Mother (and in Fact he was only of the Half-Blood) therefore the Plea was overruled. Hill. 1686. Addison and Hindmership I Vern. 442.

The Defendant pleads, that the Plaintiff brought a former Suit for the same Matters, which Suit is still depending, for ought he knows to the contrary; for the Plaintiff it was insisted, that this Plea was not good, because he does not positively aver, that the former Suit is still depending; and no listed can be taken upon his Knowledge to the contrary; but the Master of the Rolls allowed the Plea, because the Defendant ought not to have set it down to be argued; for by that he admits, that the former Suit for the same Matter is depending; but the Plea ought to have been referred to a Master to examine whether there was a former

Suit

SI

an

th

D

Su

16

of

to

cau

wh

Acc

e j

ers

ne F

at

imfe

ed

ake

and

e D

nfw

rtair

Der

ay d

Eq

aufes

ures.

Of Pleas, Answers, and Demurrers. Suit depending for the same Matter, or not; and said, there needs no positive Averment, that the former Suit is still depending, for that is examinable by the Master; and the Desendant never swears a Plea of a former Suit depending. I Vern. 332. Vide Hard. 160. where a Plea was held nought for want of an Averment in the Conclusion.

A Plea was held ill, because it went as to any Fraud suggested, &c. and likewise because it did not aver, that the Accounts which were pleaded, were just and true Accounts. Mich. 1727. Hastins and Dra-

er.

t

10

if

TS,

he

od,

the

Tue

the

al-

ant

jed;

Suit

the

Ma-

mer

Suit

Where a Decree in a former Cause may be pleaded in Bar, Vide Barnard. 77.
See Forms of Pleas postea.

#### Of Demurrers.

A Demurrer is the Allegation of the Defendant, which admitting the Matres of Fact, or some of them alledged by the Plaintiff in his Bill, to be true, shews, at as they are set forth by the Plaintiff insiels, they are insufficient for him to proted upon, or to oblige the Desendant to take Answer unto; and therefore it desands the Judgment of the Court, whether the Desendant shall be compelled to make answer to the Plaintiff's Bill, or to some train Part thereof.

Demurrers are of various Kinds. A Man ay demur for want of Parties, or for want Equity in the Bill, and for many other sufes, as the Nature of the Case re-

pires.

And

And by the Rules of the Court every Demurrer shall express the several Causes of

Demurrer.

A Defendant may demur to any Part of the Bill, so as the Demurrer be filed before the Rule to answer be out, and before he has obtained an Order for Time to answer, but after such Order obtained to put in his Answer only, he cannot demur, unless he obtains an Order for that Purpose.

ti

A

m

ca

m

ple

Re

Mi

tain

Shil

10 4

Den

fet c

A

his I

profe

pose :

that

to ob

to pr

Marti

pro C

A

wer,

of the

if ther

enable

bath in

tiff, or

Note; It is usual in your Petition for Time to answer, to pray, to plead, answer or demur, but not to demur alone, and the Order thereupon is drawn up so.

Demurrers are put in under Counsel

Hand, generally without Oath.

If the Defendant put in a Demure which is apprehended will hold good, 'tisth best way for the Plaintiff, if he has a Min to drop Proceedings, to move and obtains Order to dismiss his Bill with Costs, to taxt by a Master; which Costs being p to the Defendant, there is an End of the Suit: But no Plaintiff can dismis his B but on Payment of Costs to be taxt. I if the Plaintiff has Equity on his Side, a intends to proceed, he may apply to Court, either by Motion or Petition, amend his Bill on Payment of Twen Shillings Costs; but this is to be done fore the Demurrer is fet down to be argu otherwise the Plaintiff must pay the Dett dant the Costs he has been at in getting Order to fet down the Demurrer to be gued, and twenty Shillings besides, besides, he can amend; and if argued and allow five Pounds. But in Case the Demun will not hold good, then the Plaintiff m petiti

petition to fet down the Demurrer, and

prepare Briefs, &c.

If a Demurrer on arguing be over-ruled, the Defendant pays five Pounds Costs to the Plaintiff; but if it be allowed, the Plaintiff pays five Pounds to the Defendant: And after that the Defendant may give Notice, and move, That the Bill may be diffinis'd with Costs to be tax'd.

If a Defendant demur and answer, you cannot proceed on the Answer until the De-

murrer has been argued.

A Defendant may demur as to Part, plead as to other Part, and answer to the Residue.

If a Demurrer is put in upon a Slip or Mistake in the Bill, the Plaintiss may obtain an Order, upon Payment of twenty Shillings Costs, that he may be at Liberty to amend his Bill, at any Time after the Demurrer put in, and before the same is

fet down to be argued.

10 b

efo

un

titi

And if a Defendant obstinately insists on his Demurrer, and refuses to Answer, the prosecuted to a Sequestration for that Purpose; and where the Court is of Opinion, that sufficient Matter is alledged in the Bill to oblige him to Answer, and for the Court to proceed upon; the Court will decree the Matter of the Plaintiff's Bill to be taken for Confesso.

A Defendant served with Process to Answer, may by Advice of Counsel upon Sight of the Bill only put in a Demurrer thereto, if there be Cause, or may by like Advice be enabled to put in any just Plea, which he bath in Disability of the Person of the Plainiff, or to the Jurisdiction of the Court.

And

And fuch Demurrer or such Plea in Disability, or to the Jurisdiction of the Court, under the Hand of the Counsel, shall be received and filed, although the Defendant do not deliver the same in Person, or by Commission. And therefore if the Desendant shall pray a Commission, and thereby return a Demurrer only, such Demurrer upon Motion will be discharged; or if he returns a Plea which shall be afterwards over-ruled, the Desendant shall pay sive Pounds Costs.

t

d

D

C

ru

H

co

fei

20

fee

Mi

I

pro

ma

fwe

ver

aga

Scar

the this

Mic

that

mur

1 Ve

may

A

And Note, that the Defendant may return a Plea only by a special Commission, but cannot return only a Demurrer.

If any Cause of Demurrer shall arise and be insisted on upon debating the Demurrer, more than is particularly alledged, yet the Defendant shall pay the ordinary Costs of over-ruling a Demurrer, if those Cause which are particularly alledged be disallowed; although the Bill, in respect of that Particular, so newly alledged, shall be dismiss'd by the Court.

And observe, that Proceedings on De-

murrers are the fame as on Pleas.

# What shall be a good Cause of Demurrer.

THAT Things of a distinct Nature and joined in one Bill against different Defendants. Resolved upon Demurrer, 15 Cat. 2. between Berk and Harris, Hard. 337.

But where the Defendant demurr'd, be cause the Bill was brought against several Defendants, for several distinct Matters, yet the Demurrer was over-ruled; because

2

the Plaintiff, by his Bill, had charged the Defendant with Combination, which the Defendant had not denied by Answer. Mich. 1686. between Powell and Arderne,

1 Vern. 416.

Where a Man demurs, for that the Bill contains several Matters not relating one to the other, and in some whereof the Defendant is not concern'd, if by Answer the Defendant doth more than barely deny Combination and Confederacy, he over-rules his Demurrer. Irin. 1687. between Hester and Weston, 1 Vern. 463.

May demur to a Bill which feeks a Difcovery of a Thing which may cause a Forseiture. 24 Car. 2. Monnins against Monnins,

2Chan. Rep. 68.

A Husband may demur to a Bill that feeks a Discovery of hard Usage to his Wife. Mich. 1683. between Hinks and Nelthorpe,

1 Vern. 204.

CS

at

lif-

)e-

ref.

De-

Cat.

be.

veral

cause

the

Where a Bill chargeth Defendant with professing the Romish Religion, Defendant may demur because he is not obliged to answer to that which will subject him to diverse Penalties. MSS. Ca. in Cha. Wynn against Doughty, Mich. 8 Ann.

'Tis not proper to demur to a Bill for Scandal, but the Bill is to be referr'd, and the Scandal expunged. Yet a Demurrer in this Case was allowed. Vide 1 Vern. 107.

Mich. 1682. Page and Neale.

Where a Person by his own Bill shews that he has no Right, a good Cause of Demurrer. Pasch. 34 Car. 2. Micoe and Powell, 1 Vern. 30.

Arbitrators, if they are made Parties, may demur, for there can be no Decree against against them. Trin. 1700. Dr. Steward against

East-India Company, 2 Vern. 380.

To a Bill brought against an Heir for Payment of a Bond, he may demur, unless it be expresly alledged, that he is bound Croffing and Honor, I Vern. 180.

A Bill being exhibited to discover a per. fonal Estate and Will; the Defendants de murr'd, because it appear'd by the Plain. tiff's own shewing, that they were neither Creditors or Legatees; and the Demurrer was allowed. Nel. Chan. Rep. 88.

di

L

an

ed

tio

the

Ple

ty t

to.

V

may

he

f I

ay

as I

Cour

e w

Veri

Th

a

innot nd d e Bil

Bill in the Duchy Court for Lands, the Defendant demur'd, because the Plaintif did not aver, that the Lands were within the Duchy, which is a circumferibed lerisdiction, and the Demurrer held good. Lal Conningsby's Cafe, Modern Cafes in L. 8 E. 94.

A Wirnels cannot demur to an Interegatory, tho' it be not pertinent to the Matter in Iffue. Afton and Afton, 1 Vern. 165.

There can be no Demurrer to a Subjent in Nature of a Scire Facias, for the Subpana is no Record, nor any where filed 1 Chan. Ca. 5. Neither can there be a De murrer to an Answer, Vide I Chan. Ca. 14 and 2 Chan. Ca. 8. cont.

See Forms of Demurrers pofter.

#### Of Answering, Pleading, and Demurring to the same Bill.

W HERE there is a Commission to take an Answer only, the Defendant cannot put in a Plea or Demurrer.

Loyd and Gunter, 1 Vern. 275.

3

65.

loL.

De-

. 56

Where the Defendant answers to Part, and pleads to all other Matters not answered unto, the Plaintiff cannot put in Exceptions to the Answer, till he has first argued the Plea, or obtained an Order, that the Plea shall stand for an Answer, with Liberty to except to the Matters not pleaded unto. Dannell and Reyney, 1 Vern. 344.

Where a Defendant has demurr'd, he may affign another Cause of Demurrer at the Bar, paying Costs; and if such Cause of Demurrer is over-ruled, he ought to ay double Costs; but where a Defendant as pleaded, and there is no Demurrer in Court, he cannot demur at the Bar; tho' e would pay Costs. Durdant and Redman, Vern. 78.

Though a Person may plead to one Part a Bill, and demur to another; yet he anot, because of the Inconsistency, plead addemur to one and the same Part of a Bill. Trin. 1728. Cotter and Layer.

e geroù plevr'h bard ande ents schol quitstal son en son son son son A Commission to Plead, Answer, or Demur.

(

ir

A. his

of wh

mai

fore Day

ora

Diffe

lled

iven

II P

ver (

pon

n, to

0 0

enor

ovide

y the

in Da

u go

nveni

niwer

d An

ore u

FOR GE the Second, by the Grace of G God, of Great Britain, France and Inland King, Defender of the Faith, and fo Greeting. Whereas To A. B. Complainant, hath lately exhibited his Bill of Complaint before us in our Cour of Chancery against C. D. Defendant; And whereas we have by our Writ lately commanded the faid Defendant to appear before us in our faid Chancery, at a certain Day now past, to answer the faid Bill Know ye, that we have given unto you any three or two of you, full Power and Authority, in Pursuance of the special On der of our faid Court, to take the Answer of the faid Defendant to the faid Bill on bill Corporal Oath, upon the holy Evangelists or his Plea on his Corporal Oath, to be administred by you, any three or two of you; or his Plea or Demurrer without Oath to be respectively made to the said Bill: And therefore we command you, any three of two of you, that at such certain Day and Place as you shall think fit, you go to the faid Defendant, if he cannot conveniently come to you, and take his Answer, Plea or Demurrer respectively, as aforesaid, to the faid Bill, the fame being distinctly and plainly wrote upon Parchment; and who you shall have so done, you are to fend the fame closed up under the Seals of you, and three or two of you, unto us in our fait adw bnA. Houndang Chancer

14-14

----wherefoever it shall then Chancerybe, together with this Writ. Witness Ourfelf at Westminster the-Day ofin the-Year of our Reign.

A Commission to take a Quaker's An-Twer.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and fo forth, To----Greeting: Whereas A. B. Complainant, hath lately exhibited his Bill of Complaint before us in our Court of Chancery against C. D. Defendant; And whereas we have by our Writ lately commanded the faid Defendant to appear beore us in our faid Chancery at a certain Day now past, to answer the said Bill; but orasmuch as the said C. D. is one of the Diffenters commonly called Quakers, as is lledged; Know ye therefore, that we have iven unto you, any three or two of you, Ill Power and Authority to take the Anver of the faid Defendant to the faid Bill, pon his folemn Declaration and Affirmatin, to be made before you, any three or enor of the Statute in that Case made and id, to y three or two of you, that at fuch cerovided: Therefore we command you, in Day and Place as you shall think fit, when nd the aveniently come to you, and take his all, as aforefaid, the ancer ote upon Parchment: And when you fhall B b 2

et bis

Ast

ad-

OU;

n to

And e of

and the ently shall have so taken it, you are to send the same closed up under the Seals of you, any three or two you, unto us in our said Chancery——Wheresoever it shall then be, together with this Writ. Witness, &c.

A Commission to assign a Guardian, and to take the Answer by such Guardian.

t

af fai

th

A

1

G

rela

o fo

1. B.

is Bi

f Ch

Defen

Vrit

ants t

try at

the

D. j

niwer

ithout

ehalf;

ven u

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and fo forth, To ---- Greeting: Whereas A. B. Complainant, hath lately exhibited his Bill of Complaint before us in our Court of Chancery against C. D. Defendant; And whereas we have by our Writ lately commanded the faid Defendant to appear before us in our faid Chancery at a certain Day now past, to answer the faid Bill; but forasmuch as the said C. D. is an Infant under Age, and cannot answer the faid Bill nor defend this Suit, without having a Guardian affigned in that Behalf; Know ye therefore, that we have given unto you any three or two of you, full Power and Authority, in Pursuance of the special Or der of our faid Court, to affign and ap point a Guardian for the aforetaid Infant and to take the Answer of the faid Infan by fuch Guardian, to the faid Bill: An therefore we command you, any three two of you, that at fuch certain Day an Place as you shall think fit, you go to the si Defendant, if he cannot conveniently com to you, and affign and appoint a Guardin

for the aforesaid Infant, and take the Answer of the said Infant by such Guardian,
to the said Bill, on such Guardian's Corporal Oath upon the Holy Evangelists, to be
administred by you, any three or two of
you, the said Answer being distinctly and
plainly wrote upon Parchment; and when
you shall have so taken the said Answer,
you are to send the same closed up under
the Seals of you, any three or two of you, together with your Certificate of your having
assigned and appointed such Guardian, as
aforesaid, and this Writ, unto us in our
said Chancery——wheresoever it shall
then be. Witness, &c.

A Commission to assign a Guardian, and to take the Infant's Asswer, and the Asswers of other Defendants.

90

un-

Bill,

uar-

ye

you

1 Or

d ap

nfant

Infan : And

ree o

y an

he fai

com

ardia

CEORGE the Second, by the Grace of God, of Great Britain, France and reland King, Defender of the Faith, and o forth, To-Greeting: Whereas 4. B. Complainant, hath lately exhibited is Bill of Complaint before us in our Court f Chancery against C. D. E. F. and G. H. Defendants; And whereas we have by our Vrit lately commanded the faid Defenants to appear before us in our faid Chanry at a certain Day now paft, to answer the faid Bill; but forasmuch as the faid D. is an Infant under Age, and cannot olwer the said Bill, nor defend this Suit ithout having a Guardian affigned in that chalf; Know ye therefore, that we have ven unto you, any three or two of you, B b 3 full

full Power and Authority, in Pursuance of the special Order of our faid Court, to affign and appoint a Guardian for the afore. faid Infant, and to take the Answer of the faid Infant by fuch Guardian, and the Anfwer of the faid other Defendants to the faid Bill: And therefore we command you, any three or two of you, that at fuch certain Day and Place, as you shall think fit, you go to the faid Defendants, if they cannot conveniently come to you, and affign and appoint a Guardian for the aforesaid Infant, and take the Answer of the faid Infant by fuch Guardian, and the Answers of the faid other Defendants to the faid Bill, on their Corporal Oaths upon the Holy Evangelifts, to be administred by you, any three or two of you, the faid Answers being diffinctly and plainly wrote upon Parchment; and when you shall have fo taken the faid Answers, you are to send the fame closed up under the Seals of you any three or two of you, together with your Certificate of having affigned and appointed such Guardian as aforesaid, and this Writ unto us in our faid Chancer -wherefoever it shall then be

Witness, &c.

char as tuch cerrain

dominary in the components the

bridger on the bridger 23. 6 3/2 to

in their Larpaya (Auto apon the bloom

ant sile and the same

C. C. Chelendant, the Infant, the

A Con

fo

A

pla Co

ce

wh

ma

for

Day

And

an a

ther

any Auth

Defe

n a

of th

Bill;

Day :

0 to

onven Infwe

y his Inswe

ill, oi

Eva

A Commission to take the Infant's Answer by his Guardian already assigned him, and the Answer of another Defendant.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and fo forth, To-Greeting: Whereas A. B. an Infant, by his next Friend, Complainant, hath lately exhibited his Bill of Complaint before us in our Court of Chancery, against C. D. &c. Defendants; And whereas we have by our Writ lately commanded the faid Defendants to appear before us in our faid Chancery at a certain Day now past, to answer the faid Bill; And whereas the faid C. D. hath a Guardian already affigned him-Know ye herefore, that we have given unto you, my three or two of you, full Power and Authority to take the Answer of the faid Defendant C. D. an Infant, by his Guardin already affigned him, and the Answer of the faid other Defendant, to the faid Bill; and therefore we command you, any hree or two of you, that at such certain Day and Place as you shall think fit, you to the faid Defendants, if they cannot onveniently come to you, and take the inswer of the said Desendant, the Infant, y his Guardian already affigned, and the niwer of the other Defendant, to the faid on their Corporal Oaths upon the Ho-Evangelists, to be administred by you, B b 4

U,

on

cery

n te

4 Con

any three or two of you; the said Answers being distinctly and plainly wrote upon Parchment; and when you shall have so taken the said Answers, you are to send the same closed up under the Seals of you, any three or two of you, and this Writ, unto us in our said Chancery—whereso ever it shall then be. Witness, &c.

A Commission to take the Plea, Answer, or Demurrer of Infants by their Guardian already assigned.

th

be

Irei fo

A.

his

of (

dani

com

Day

but

are a been

a-ger

give

full 1

EORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and fo forth, To ---- Greeting: Whereas A. B. Complainant, hath lately exhibited his Bill of Complaint before us in our Court of Chancery against C. D. and E. F. Infants, Defendants; and whereas we have by our Writ lately commanded the faid Defendants to appear before us in our faid Chancery at a certain Day now past, to answer the said Bill; and whereas the faid C. D. and E. F. are infants, and have a Guardian already affigned them; Know ye that we have given unto you, any three or two of you full Power and Authority, in Purfuance of the special Order of our faid Court, to take the Pla Answer or Demurrer of the faid Infants to the faid Bill by their Guardian already af figned: And therefore we command you any three or two of you, that at fuch cer tain Days and Places, as you shall think in you go to the faid Defendants, if they can not conveniently come to you, and take th

Answer of the said Infants by their Guardian already affigned, to the faid Bill, on fuch Guardian's Corporal Oath upon the Holy Evangelists, or their Plea on their Guardian's Corporal Oath, to be adminifired by you, any three or two of you, upon the Holy Evangelists; or their Plea and Demurrer without Oath to be respectively made to the faid Bill; the faid Answer, Plea or Demurrer being distinctly and plainly wrote upon Parchment: And when you shall have fo taken them, you are to fend the same closed up under the Seals of you, any three or two of you, unto us in our faid Chancery ---- wherefoever it shall then be, together with this Writ. Witnefs, &c.

# A Commission to take the Answer of a Corporation.

ıft

e-

ain

ind

in-

ned

nto

Wet

lea

5 10

you

cer

c fit

can

e the

GFORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and fo forth, To-Greeting: Whereas A. B. Complainant, hath lately exhibited his Bill of Complaint before us in our Court of Chancery against C. D. E. F. &c. Defendants; and whereas we have by our Writ commanded the faid Defendants to appear before us in our said Chancery at a certain Day, now past, to answer the faid Bill; but forasmuch as the said C. D. E. F. &c. are a Body Corporate, and ought and have been accustomed to put in their Answer by a-general Confent; Know ye that we have given unto you, any three or two of you, full Power and Authority to take the Anfwer

fwer of the faid Defendants to the faid Bill under the Common Seal of the faid Cor. poration: And therefore we command you any three or two of you, that at fuch cer. tain Day and Place, as you shall think fit. you go to the faid Defendants, if they cannot conveniently come to you, and take their Answer to the faid Bill under their Common Seal; the faid Answer being diflinctly and plainly wrote upon Parchment: And when you shall have so taken it, you are to fend the same closed up under the Seals of you, any three or two of you, unto us in our faid Chancery ---- wherefoever it shall then be, together with this Writ. Witness, &c.

t

P

m

D fa

fh

th

an Cl

th

ne

A Commission to take the Answer of a Corporation, and the Answer of other Defendants.

EORGE the Second, by the Grace G of God, of Great Britain, France and Ireland King, Defender of the Faith, and fo forth, To --- Greeting: Whereas A. B. Complainant, hath lately exhibited his Bill of Complaint before us in our Court of Chancery against C. D. E. F. &c. Defendants; and whereas we have by our Writ commanded the faid Defendants to appear before us in our faid Chancery at a certain Day, now past, to answer the said Bill; but forasmuch as the said C. D. &c. are a Body Corporate, and ought and have been accustomed to put in their Answer by a general Consent; Know ye that we have given unto you, any three or two of you full

full Power and Authority to take the Anfwer of the faid Defendants the Corporation to the faid Bill under the Common Seal of the faid Corporation, and the Anfwer of the faid other Defendants on their Corporal Oath upon the Holy Evangelifts, to be administred by you, any three or two of you: And therefore we command you. any three or two of you, that at fuch certain Day and Place, as you shall think fit, you go to the faid Defendants, if they cannot conveniently come to you, and take the Answer of the faid Defendants the Corporation to the faid Bill under their Common Seal, and the Answer of the faid other Defendants on their Oath as aforefaid; the faid Answers being distinctly and plainly wrote upon Parchment: And when you shall have fo taken them, you are to fend the same closed up under the Seals of you, any three or two of you, unto us in our faid Chancery ---- wherefoever it shall then be, together with this Writ. Witnels, &c. A mustive than to show to besters King, Defouder of the Parts and

o toring To -- Greeting Wirth

his Bill of Complaint before us in our Court of A. A. of D. Burgs (reduct Office

A'sin somement the laid Delendand appear before us in our field Chaucs.

but of they were used to entered

P. H. Mais cto mauch by the look L. H. St.

it a Body Correlate, and ought and

Windstreet many of bunnings trans-

todayers and whereas we have he

A & Complainant, nath larely

d

d

d

e-

70 to

a id

c.

97

by

ve Lil, ull

#### CHAP. IX.

m

Stor

m Bi

pli

Bil

exl

ed

the

clai

rep

fam

Plea

plica

to t

regu

Rep

mitt

& v

Cou

fed t

hear

cree :

when

gain

rour

Cauf

T

If

Of Replying, Rejoining, and Joining in Commission; and berein of Dismissions before Hearing.

WHEN a full Answer is in, and the Plaintiff intends to proceed, he may forthwith file a Replication.

Replications are either General or Special.

A General Replication is a Reply by the Plaintiff to the Answer of the Defendant, and is an Averring or Inforcing of the Allegations in the Bill, and an Avoiding or Denying the Matters in the Answer.

A Special Replication is only putting some Part of the Bill in Issue, and so much of the Defendant's Answer to that Part of the Bill; and in that Case, Witnesses are to be examined only to those Parts, and not to any other Part of the Bill, or Answer, but a Special Replication very seldom happens; tho' in many Cases it would be for the Plaintiff's Benefit, and not make the Pleadings so prolix as they generally are.

The Replication must be general, except the Defendant by his Answer offers new Matter, which will not be brought into Issue by the Bill and Answer or where he denies only one, or some sew Points of the

Bill. Vide Ord. Chan. 122.

And if it be needful to prove one, or a few particular Points, the Plaintiff ought to reply to those Points only, on Pain of Costs;

Of Replications and Rejoinders, &c. But the Court generally orders Costs at the

Hearing, as they think fit.

The Replication affirms and avers the Bill to be true; and it is to be short, and must directly and pertinently pursue the Substance of the Bill, and confess and avoid, or traverse or deny the Answer: And it must by no Means be a Departure from the Bill.

A Plaintiff having put Matters in his Replication, which were not contained in the Bill, and which the Plaintiff knew of at the exhibiting the Bill; the Defendant pleaded and demurred to the Replication, which the Court allow'd of. 1 Chan. Rep. 259.

When the Defendant doth demur, or difclaim only to a Bill, the Plaintiff cannot

reply.

N

e

be

to

ut

s;

he

d-

pt

ew

nto

he

the

T 2

to

fts;

But

Where there is a Plea and Answer to the same Bill, and the Plaintiff replies to the Plea only, it will be irregular; for the Replication must be to the Answer as well as to the Plea. The Cause put off for that Irregularity. Nicol and Wiseman, 2 Vern 46.

If after a Plea or Demurrer to a Special Replication allowed, the Plaintiff may be admitted to put in a General Replication, 2. & vide 1 Vern. 351. where it was urged by Counsel that he may; but the Court refu-

fed to give any Opinion.

The Plaintiff set down his Cause to be heard on Bill and Answer, and had a Decree against the Desendant by Desault; and when the Desendant came to shew Cause against the Decree, it was alter'd in his Favour; the Plaintiff petition'd to rehear the Cause, and at the Rehearing pray'd Leave

Of Replications and Resoluters, &c. to reply to the Desendant's Answer, and had it, paying Costs. Mich. 1669. Lord

Donegall and Warr.

In many Cases, tho' the Cause require no Witnesses to be examined, yet it may be necessary for the Plaintiff to reply, whereby the Desendant will be put upon Proof of his Answer, and the Plaintiff admitted to prove the Matters of his Bill: But if the Plaintiff reply to an Answer, and without Rejoinder or Rules brings the Cause to a Hearing, the Answer shall be taken wholly true, as if there had been no Replication; for the Opportunity which the Desendant had of proving his Answer is taken from him. 2 Chan. 21.

And if the Subpana to rejoin be not ferved, &c. though it be fued out, the Caufe may be heard on Bill and Answer.

It is now the Course of the Court, that the Plaintiff be allow'd to the End of the third Term after coming in of the Desendant's Answer to file his Replication, exclusive of the Term the Answer is filed in.

If a Plaintiff obtains an Order to amend his Bill, which he does not do in a reasonable Time, yet this shall not be such a Proceeding as to keep his Bill on Foot, and hinder its being dismissed for Want of Prosecution.

Note; If a Bill be dismissed for want of a Replication, or other Proceeding, yet the Court on Application, often orders that the Bill be retained on Payment of Costs out of Purse; in which Case the Desendant may apply to have such Order discharged, especially if the Plaintiff has been guilty of Delay. But after joining in Commission

(yes,

a

ti

N

hi

m

bu

to

the

of .

Cer

ed,

fida

A

iff

hree

he i

ice

iled,

Coun

An

ften

o be

In

rosec

Cause

y, a

e tax

ff's B

Of Replications and Rejoinders, &c. (yea, before the Names are struck) the Defendant hath no Method left to get rid of his Cause, but by obtaining a Commission ex Parte, and after the Depositions are returned, to get a Rule entered to pass Publication, and the Cause set down and heard at his own Request. And when your Witnesses live in Town, or within ten Miles thereof, a Rule must be entered to produce Witnesses, and Interrogatories must be exhibited in the Examiner's Office for Examination of Witnesses there.

On dismissing a Bill before Replication, 'tis not necessary to serve a Notice of Motion: but it is usual only for the Clerk in Court to leave a Note at the Seat of the adverse Clerk with himself, or his Clerk or Agent there, that he will dismiss the Bill for want of Profecution, and fo get the Six Clerk's Certificate, on which the Motion is grounded, and moved of Course without any Af-

fidavit.

e

110

.

.

d

1-

0.

nd

0--

of

he

he

out

ant

ed,

of

fion vel,

trer coming in of the After a Replication put in, if the Plainiff ceases all manner of Prosecution for bree Terms exclusive, the Bill may, upon he Six Clerks Certificate, and giving Noice of Motion and an Affidavit thereof iled, (if not defended by the Plaintiff's Counsel) be difmis'd. That it agrad an rabatt

And observe, that a Plaintiff may, and ften does, dismis his own Bill with Costs

o be taxed.

In Case of a Dismission for Want of rosecution (and not on the Merits of the (ause) on Motion and Excuse of the Dey, and paying Costs out of Purse, or to taxed, of the Dismission of the Plainf's Bill, by special Order it may be retained

Df Replications and Rejoinders, &c. tained, or he may have Leave given to exhibit a new Bill; the doing of which is merely at the Difcretion of the Court: But in this Case he ought to proceed with Es. fect in his Cause, in which if he fails, it will come a fecond Time to be difmiffed for want of Profecution, with Costs to be

taxed by a Master.

But though this Proceeding of dismissing Bills for want of Profecution, with Cofts, is laid down as an established Rule of the Court, yet Cases may be found where it will not hold good: As for Example; where a Bill is filed against several Defendants, it often falls out that one Defendant answers in due Time, when at the same Time another Defendant is profecuted for want of an Answer, and the Plaintiff cannot proceed in his Cause until all the Answers are in; therefore whenever this Case happens, and where it appears to the Court, that the Plaintiff is going on with his Suit, and profecuting for want of an Answer, it has always been allowed as a good Cause to difcharge the Order of one fingle Defendant, under Pretence of difmiffing the Bill for want of Profecution.

Note ; A Plaintiff here may either make a general Election to proceed here or at Law, or a special Election, as to proceed for Part here, and the other Part at Law; but the Court will judge of the Reasonableness of

that special Election. Gilb. 183.

A Dismission upon an Election to proceed at Law is not peremptory, but the Plaintiff may, after he has failed at Law, bring a new Bill. 2 Vern. Ca. 24. Counters of Plymonth and Bladen.

Thus

ce

the

fair

Bil

Lav faid

unti

by t othe

faid .

in th

not

rave

ers a

e re

oura rays,

dread

The

nent narked

the e fub

VOL.

# Of Replications and Rejoinders, &co.

Thus much may in this Place suffice touching Dismissions; concerning which I propose to treat more particularly hereafter.

also Correct Suggest efficient in

# A Replication.

The Replication of A. B. Complainant, to the feveral Answer of C. D. Defendant,

THIS Repliant, faving unto himself all and all Manner of Advantages of Exception to the manifold Insufficiencies of the faid Answer, for Replication thereunto faith, That he will aver and prove his faid Bill to be true, certain and fufficient in the Law to be answered unto; and that the laid Answer of the Defendant is uncertains untrue, and insufficient to be replied unto by this Repliant; without that, that any other Matter or Thing whatfoever in the aid Answer contained, material or effectual in the Law to be replied unto, and herein not replied unto, confessed and avoided, raversed or denied, is true; all which Maters and Things this Repliant is, and will e ready to aver and prove, as this Hoourable Court shall award: And humbly rays, as in and by his faid Bill he hath ready prayed. Salente of poster in workers

S,

at

nd

125

if-

nt,

for

ea

aw,

Part

the is of

pro-

the

Law,

inte s

Thus

The Replication being ingross'd on Parchent with double 12 d. Stamps, is to be marked near the Top thereof with the Day of the Month and Year when filed, and to a subscribed near the Bottom on the left Vol. I. C c Side,

Of Replications and Rejoinders, &c.

Side, with the Surname of the Clerk in Court who files it, and also the Term in which the Bill was filed, with the Surname of the Defendant's Six Clerk. This done, the Clerk in Court enters it in his Cause. Book, and then files it with his Six Clerk, acquainting the Defendant's Clerk in Court by a short Note in Writing that he has so done.

t

P

to

M

Pi

lef

to to

Pu Co

Ter

. 1

miff

the .

get a

Sul

tept

ore

he F

n O

enda

Name

Comn

x par

H

hich

the the

Thus much for Replying; proceed we now to Rejoining, and Joining in Commission.

### Rejoining.

ND here we may observe, That where the Plaintiff files his Replication in Term, he may fue out a Sulpana against the Defendant to rejoin, returnable at a certain Day in Termtime, and may, if he pleases, serve the Defendant therewith: But this rarely happens, unless where the Defendant lives in Town, and may be easily served; for it is most usual to apply by Motion or Petition, That a Subpana to rejoin, returnable inmediate, may be iffued against the Defendant, and that Service thereof on the Defendant's Clerk in Court may be deemed good Service of the Defendant; which is of Course: And to this is also added (in a Country Cause) that the Plaintiff may be at Liberty to take out a Commission for Examination of Witnesses, and that the Defendant may join and strike Commissioners Names in four Days after Notice thereo to his Clerk in Court, or in Default there

of Replications and Rejoinders, &c.

of, that the Plaintiff may have a Commiffion to examine Witnesses, directed to his own Commissioners; which is also granted of Courfe.

And here it may not be amiss to observe, that there can be no Order granted to pass Publication, or for fetting down the Caufe to be heard, without giving a Notice of Motion and obtaining an Order for that Purpose: But now the Court seldom, unless in extraordinary Cases, grants an Order to pass Publication, or set down the Cause to be heard; but the usual Method now is to pass Publication by Rules, and after Publication so passed, the Plaintiff may of Course set down the Cause the succeeding

Term after Publication passes.

n,

m-

)e-

ap-

in

t is

on,

in-

fen-

De-

med

h is in a

be at Exaefen-

oners

erco

here

When the Plaintiff intends to go to Commission to examine Witnesses, he must serve the Defendant with a Subpana to rejoin, or get an Order to ferve his Clerk in Court with Sulpana to rejoin, returnable immediate (exept the Defendant will rejoin gratis) beore he can have his Commission; and on he Return thereof, the Plaintiff may, by n Order for that Purpose, oblige the Deendant to join and strike Commissioners lames, or in Default thereof, take out a Commission for Examination of Witnesses x parte.

# Foining in Commission.

THE Party's Clerk in Court intitled to the Commission, applies to the Clerk the other Side to join in Commission, hich is done in Manner following, viz.

Of Replications and Rejoinders, &c.

First, He who has the Carriage of the Commission, names a Commissioner, then the other does so also, and so alternately, till each of them has named four, which they enter in their Commission-Books; and after each hath consulted his Client, he strikes out two of the four Names in this Manner; first, He that hath the Carriage of the Commission strikes out one of those that were named by the other Party, and then the other strikes out one of those that were named by him, and so each of them strikes out one more; which being done, the four remaining are the Commissioners.

But if a Defendant joins in a Commission, and afterwards refuses to strike Commissioners Names, the Court, on Petition, will strike out such two of them as they please; the Plaintiff's Clerk in Court being at Liberty, notwithstanding the Defendant's Clerk in Court refuses to strike the Plaintiff's Commissioners Names, to strike out which two of the Defendant's Commissioners Names he shall think sit; and the Commission shall go to such of the sour Commissioners as are left standing.

Commissioners ought to be indifferent Persons. And after Names are struck, and one of the Parties finds that the adverse Party's Commissioners, or one of them, it of Kin, or Counsel, or Solicitor for the Party, he may by Motion or Petition complain thereof to the Court, who will order such Party to name two other, indifferent Commissioners instead of that Commissioners for complained against, and the other side to strike out one of those two so named.

N. B

b

ha

25

Bo

De

the

En

A. ] C. L

Se

Rule

other

Notic

with 1

1. B.

D. ]

But i

### Of Replications and Rejoinders, &c.

N.B. As to the Forms of Rejoinders, and also Surrejoinders, and Rebutters or Ad-surrejoinders, treated of by several modern Authors, they are all of them now quite disused; therefore I shall say no more about them.

When Witnesses are examined in the Examiners Office, the Plaintiff, after he has examined one or more of his Witnesses, as before, may enter a Rule in the House-Book to produce Witnesses, and give the Defendant's Clerk Notice thereof, and at the same Time must leave a Note with the Entring Register, as follows;

23d Oct. 1744.

A. B. Pl. 3 C. D. Def. 3

10-

he

our

ent and erfe

the

om

rder

erent

Side ed.

N. B

A Day is given to the Defendant to produce Witnesses.

E. F. Clerk for the Plaintiff.

Seven or eight Days after giving which Rule, you may enter in like manner another Rule for passing Publication, and give Notice thereof as before, and leave a Note with the Entring Register as follows;

1ft Nov. 1744.

A.B. Pl. 3 D. Def. 3

A Day is given to the Defendant to shew Cause why Publication should not pass.

E. F. Clerk for the Plaintiff.

But if the Plaintiff takes out a Commison for Examination of Witnesses in the C c 3 Country, Of Replications and Rejoinders, &c.

Country, and if the Defendant does not join therein (i. e.) by naming Commissioners on his Part, or if he does join in such Commission, but examines no Witnesses, then the Plaintiff's Clerk ought, upon the Return of such Commission, to give two like Rules as before.

But if both Sides examine Witnesses by fuch Commission, then upon the Return of fuch Commission the Plaintiss need give only one Rule, as before, for passing Publication, which is as follows;

22d Nov. 1744.

fe

pr

for

are

and

off

Co

no.

ters Bill

ties

ness

Evi

Wit

And

ordin

Part

der,

mine

be pr
W
Exam
there
cation

pofe,

A. B. Pl. 7 C. D. Def. 5

A Day is given to the Defendant to shew Cause why Publication should not pass upon a joint Commission.

E. F. Clerk for the Plaintif.

Note; Each of the Rules as above, in Strictness passes that Day Seven-night after the respective Dates of such Rules; and after the Expiration of the Rule given for passing Publication, no Witness can be examined on either Side, unless an Order be obtained for enlarging Publication before such Rule expires, or the Plaintist and Defendant's Clerks agree to enlarge Publication by Consent.

CHAP

#### CHAP. X.

Of Interrogatories, and Commissions to examine.

Interrogatories are Questions exhibited in Writing by the Party, Plaintiff or Defendant, or directed by the Court, to be proposed to and asked of the Witnesses in a Cause touching the Merits thereof, or some Incident therein. Also Interrogatories are touching Contempts of Writs, Processes and Orders of Court, whereupon the Party offending is to be examined concerning such

Contempt, &c.

f.

tef

nd

for

ex-

be

ore

De

Ca-

As on Hearings upon Bill and Answer, no Evidence is to be admitted (except Matters of Record) but what arises from the Bill and Answer itself; so when the Parties proceed to the Examination of Witnesses, the Cause is determined by such Evidence as arises from the Depositions of Witnesses examined upon Interrogatories. And both the Plaintiff and Defendant may ordinarily exhibit Interrogatories; for when Parties are at Issue, it is necessary to consider, as well what the other Side may examine unto, as what ourselves can prove, and so counter or cross Interrogatories may be prepared, if there be Occasion.

Where Interrogatories are exhibited in the Examiner's Office, and Witnesses examined thereon, either Party may, without Application to the Court, or Order for that Purpose, exhibit one or more Interrogatories,

Cc4

or a new Set of Interrogatories, for further Examination of the same or other Witnesses; but where the Commission is taken out for Examination, there no new Interrogatories, or Set of Interrogatories, can be exhibited without Motion or Order of the Court. And the Reason of the Diffe. rance was faid to be, because the Examiner is an Officer of Credit and fworn, and fo prefumed to be impartial, and that he will not disclose the Depositions to either Party; but the Commissioners are private Persons and not fworn, and are called the Plain. tiff's Commissioners or Defendant's Commillioners, and fo without Leave of the Court no new Interrogatories can be added before them. Gilb. 42.

p

ar

to

as.

If

th wh

lar

mio

wit

hib

ith

xa

he

ore

n t

con

thic

is f

vere

ide

W

pon

kam

rrog

e ex

itn

otwj

omr

N. B. New Interrogatories were ordered to he exhibited on suppressing the old. In this Case the Interrogatories, and the Depositions of Witnesses taken on them, had been suppressed, for that the Interrogatories were leading, and then Publication passed. And now the Court was moved, that a new Set of Interrogatories might be drawn and lettled by the Master, for the Examination of this Witness, whose Evidence was very material, and yet must be wholly lost, if the Court would not indulge them this Way; and though the Practice has been always against it, and it was infifted to be of dangerous Consequence, yet one Precedent being produced to this Purpose, and the Interrogatories which had been suppressed were fuch as might have been drawn by many other Counfel, without any Apprehenfion of their being leading; the Court to let in the Party to the Benefit of this Witness

Witness's Testimony, ordered new Interrogatories to be fettled by a Master, and put in for his Examination over again. Spence versus Allen, Gilb. 150. Ca. 232. S. C.

18

.

-

le

b

to

le

of

10-

ere

nd Set

et-

of

ma-

the

ay;

ays

lanbe-

Inffed

by

pre-

urt

this ess

All Interrogatories must be drawn, or perused and figned by Counsel; and they are to be fhort and pertinent, and necessary to the Point: They must not be leading, as, Did you not do, or fee such a Thing? &c. If they are fuch, the Depositions taken thereon will be suppressed; and so it is where the Interrogatories are too particular, or point to one Side of the Question more than the other.

They must be ingrossed on Parchment with double 12d. Stamps, and are to be exhibited before any Witnesses examined on ther Side: And if Witnesses are to be xamined before an Examiner of the Court, he Interrogatories must be produced beore, and left with him at the Office: If the Country on a Commission, the Inerrogatories may be exhibited before the commissioners on opening the Commission, hich is now the general Practice. Tho' is faid that heretofore the Interrogatories ere always included in the Commission. ide Ord. Chanc. 216, 217.

When Witnesses are examined in Court pon a Schedule of Interrogatories, there all be no new Interrogatories put in to samine the same Witnesses: But new Inprogatories, by Leave of the Court, may exhibited in Court for examining new Vitnesses at any Time before Publication, ptwithstanding there has been a joint ommission executed in the Country. And

on

on a Supplemental Bill, the Court will, up. on Motion, give Leave to add to the first Interrogatories, so as the new Interrogatories contain nothing but what relates to the Supplemental Matter. Ord. Chan. 126,

r

fu

fu wi

Co

to He

W

by fter

may

to a

for :

Wife

terre

othe

in th

othe

mine

them

No Re-examination of Witnesses is allowed, tho' upon the same Interrogatories, without Leave of the Court: But if either Party have a Commission de Novo, after he hath examined on a former, he must examine on the same Interrogatories as were exhibited by him on the former Commission; and no other Interrogatories can be admitted without an Order, or Consent of Parties.

If Leave is given to examine a Witness after Publication, and before Hearing, a Master is commonly order'd to settle the Interrogatories, and that they may be to such Points only as were omitted before, and as are now ordered to be examined unto; unless it be merely to prove an Exhibit and the Interrogatory was before filed.

And all Interrogatories for proving particular Points needful upon a Reference to a Master, shall be directed by the Master,

and shall be to fuch Points only.

And tho', by the Orders of the Court, the Parties are to make their full Proof before Publication and Hearing of the Cause; yet after Hearing, if there be a Reference to a Master for the stating an Account, or such like Matter, and he shall find any particular Points and Circumstances needful to ground his Report upon, which are not fully proved, nor could properly be examined to before the Hearing of the Cause,

he may direct the Parties to draw Interrogatories to fuch Points or Circumstances only, and fuch Witnesses are usually examined before such Master upon such Interrogatories, if the Witnesses be or reside within ten Miles of London; but if farther off, and the Parties defire it, he may by his Certificate direct a Commission into the Country, which is to be made out by the Plaintiff or Defendant's Clerk that defire fuch Commission: And on the Return of fuch Commission, Publication shall forthwith pass according to the Course of the Court. Vide Ord. Chan. 156.

But the more common Way now is, not to examine to a Matter of Account before Hearing, but after, before a Master, if the Witnesses be in Town or near; if not, then by Commission to be directed by the Mafter upon his Certificate: And either Party may examine Witnesses to an Account, or

to a particular Thing, after Hearing.

0

e,

d

.

re

11-

to

er,

Itt,

be-

fe; nce

121to not xa-

ufe, he

In Case of a Prosecution of a Contempt for Breach of an Order of Court, or otherwife grounded upon an Affidavit, the Interrogatories shall not be extended to any other Matter than what is comprehended in the faid Affidavit or Order. And if any other shall be exhibited, the Party examined may for that Reason demur unto them, or refuse to answer them.

# Commission to examine.

THIS Writ is either to examine the Par. ties, or Witnesses; or others, as Contempers, &c.

A Commission to examine Witnesses is sometimes to examine them to the Cause, i. e. as to the Merits thereof, or to some particular Point in Question; or it may be to examine them touching a Contempt, or the Breach of some Order of Court, &c. Examination to the Cause is generally be. fore Hearing, tho' sometimes it may be aster Hearing, as upon an Account referred to a Master, or upon new Matters arising at the Hearing.

iı

til

be

fid

ord

mif

Cle

je

Defi

trik

vith

hat

Com

Com

fits

ide.

Bu

he Pa

here :

The

omm

lainti

ulge

caufe

otice

A Commission is also often had to examine Witnesses in perpetuam Rei Memoriam, touching which see hereafter: [And vike

ante Bills.]

At other Times 'tis to examine Witnesse beyond Sea, and then if they be Foreigners, or Natives, to examine them on their Oaths, and the Oaths of skilful Interpreters.

And when each Commission is executed, one of the Commissioners, or Person that received it from one or more of the Commissioners, must deliver the Commission executed into the Master's publick Office here in England, and make the usual Oath, that he received it from the Hands of one or most of the Commissioners, and that the same hat not been open'd, nor alter'd fince he so received it. But if one of the Commissioners brings over such Commission, he need make no Oath,

Oath, but the Plaintiff or Defendant's Clerk in Court only indorfes the Day, Month, and Year, on such Commission, and underneath writes, By the Hands of A. B. one of the Commissioners.

Though a Cause be only Matter of Account which may be, and generally is, examined to after Hearing, yet where a Defendant defires a Commission before Hearing, the Court always grants it, as being

what he has a Right unto.

d

2-

de

les

70-

eir

re-

ed.

re-

mil-

exe-

here

that

more

bath

eiv'l

rings

e no

Jath,

And though this Commission to examine Witnesses is not ordinarily to be granted till the Cause be at Issue; yet if a Witness be very aged or fick, upon making an Affidavit thereof, the Court will sometimes order it de bene esse even before Answer.

After you have joined and struck Commissioners Names with the Defendant's
Clerk in Court, you proceed to make out
a joint Commission to examine; but if the
Defendant's Clerk in Court fails to join and
trike Commissioners Names, being ferved
with an Order and Subpana to rejoin, for
hat Purpose, you may then make out a
Commissioners; in which Case no Notice
of its Execution need be given to the other
ide.

But if the Defendant rejoins gratis, or he Parties go to Commission by Consent,

here needs no Subpana to rejoin.

The first Taking out and Carriage of the commission is regularly the Privilege of the laintiff; but the Court will sometimes inalge the Defendant with a Duplicate, cause in Case the Plaintiff resuses to give otice of the executing thereof, and does

not

not intend to execute it; then the Defendant may make use of his Duplicate, and proceed to examine Witnesses by Virtue thereof: And this Duplicate is the rather granted if 'tis doubtful whether the Plain. tiff will execute his Commission, or not, and more especially if he be forced on by the Defendant, as in an Injunction Caule. where Delay is only defigned: And fome. times this Duplicate is granted by Consent.

If the Witnesses for the Defendant live far distant from the Plaintiff's, as fixty or eighty Miles, or beyond the Seas, where the Plaintiff hath none; in this Case the Defendant may have a Commission for examining his Witnesses only, and have the Carriage thereof: But the Plaintiff may join in fuch Commission, and cross examine the Defendant's Witnesses on the Plaintiff's Interrogatories, or examine what other Witnesses he pleases on such Commission.

th

w

De

po

mif

der

and

and

Defi

othe

Depo

ity. Ind

rant

in i

lotic

lay I

giv

Af

Mo Mo

Maft

If to

tend

ey m

e De

nd; b

If when a Cause is at Issue the Plaintiff will not go on to Commission, the Defendant may by Order have a Commission to examine his own Witnesses, and shall have the Carriage thereof. And fo if the Plaintiff commit any Abuse in the Execution of the first Commission, the Defendant shall have the Carriage of the fecond.

Also where a Commission lost, by the Fault of him who had the Carriage of it is renewed, the other Side sometimes hath

the Carriage of it.

Observe, That the Examiners have Right to examine all Witnesses in Town or within ten Miles of the Town, which is the Circuit of the Court; and if any Commission be made, or Witnesses examined with

within that District, the Depositions taken by Commission will, upon Complaint, be suppress'd, and the Clerk who made out the Commission will stand committed for a Misbehaviour and a Breach of the known Duty of his Office.

No Commission can be executed in Termtime unless by Leave of the Court, or by

Consent.

All Commissions for Examination of Witnesses are to be made returnable on one of the Returns in or before the Term, unless where the Parties agree to have it without Delay, or an Order is obtained for that Pur-

pole.

et

f

n-

to

ive

in-

of

hall

the

f it,

e 1

WD,

chi

om

ined

He who has the Carriage of the Commission must give fourteen Days Notice under his Commissioners Hands of the Time and Place for executing the Commission; and fuch Notice must be given to all the Defendants, who join in such Commission, therwise it is not good Notice, and the Depositions may be suppress'd for Irregulaity. But personal Notice is not necessary: and in Default of Notice the Court will rant the other Side a new Commission, in Case of the Plaintiff's refusing to give lotice, the Defendant having a Duplicate ay use it. And if Notice is directed to given to a Person you cannot find, then Affidavit thereof and filing it, you may Motion or Petition obtain an Order for Master to appoint Time and Place.

If two of the Plaintiff's Commissioners tend at the Time and Place appointed, ey may proceed therein ex parte, though a Defendant's Commissioners fail to atid; but if the Defendant's Commissioners

attend,

attend, and not the Plaintiff's, they cannot go on; because the Plaintiff, having the Carriage of the Commission, will not produce it, if he is disappointed of his Commit fioners; which makes a Duplicate thereof more necessary, for then the Defendant's Commissioners may proceed in executing the Duplicate.

But where no Duplicate is, but Defen dant's Commiffioners artend at the Time and Place appointed, and not the Plaintif's the Defendant is to have Cofts, occasioned by the Defendant's Commissioners and Win nesses attending at the Place appointed and the Court will permit him to fue out another Commission, and order him the Carriage thereof.

d

m

ga

rei

ta

nif

I

niff

niff

por

iffi

ad

e C

s th

d t

kecu

her

y P

T A

ffion

it th

Tis

de,

ich tl

f by

e of

reon,

er Si

Where one Commissioner met on each Side, and the Plaintiff's Commissioner west away without doing any Thing, whereby the Commission was lost, the Court order the Plaintiff to pay the Defendant his Colle and granted a new Commission, and the Defendant the Carriage thereof; for on Commissioner on a Side is fusficient, as one at least on each Side must atrend.

The Commission being opened and read both Parties are then obliged to exhib their Interrogatories, if they intend to es mine any Witnesses: And the Interrogno ries on both Sides are to be figned by the Commissioners then present; and con fequently if the Plaintiff exhibits his Into rogatories, and the Defendant neglects exhibit any, and his Commissioners atto the Execution of the Commission, where they have an Opportunity of feeing a hearing every Thing that is proved on Plaintil

Plaintiff's Part, and yet perhaps all this while they have exhibited no Interrogatoties; and after all this it often falls out. that the Defendant moves the Court for a new Commission, upon Suggestion that he had no Opportunity of examining his Witneffes at the last Commission; and if it shall appear by Affidavit or Certificate of the Plaintiff's Commissioners, that the Defendant's Commissioners attended during the whole Time of the Execution of the Commission, and never exhibited any Interrocatories, in this Case the Court will, but ery rarely, and that upon special Circumfances, grant the Defendant another Com-Vide I Chan. Ca. 274. nission.

If Notice be given of executing the Comniffion, and at the Day appointed the Comiffion is opened, but nothing done therepon, nor any Adjournment made, the Comission is loft, except the other Side agree adjourn, or to take new Notice: But if e Commission be not opened, and he who s the Carriage thereof gives new Notice; d then executes it, this is a sufficient secution, unless in the mean while the her Side obtain and ferve an Order to y Proceedings 'till the Costs of the forr Attendance of the Defendant's Comfioners and his Witnesses be paid, and t they are not paid.

eby

ods, the

one

read

shill

CM

gato

by a

- COB

Inte

ects 4

atto herd

ng a

OB U

aintiff

Tis usual, when an Adjournment is de, to make a Memorandum thereof, ich the Commissioners are to sign.

f by Default of him that has the Care of the Commission nothing is done teon, he shall bear the Charges the er Side is put to about it, either for Fees, Dd

of

of Court, bringing or retaining Commif. fioners or Witnesses, or otherwise, to be afcertained by the Oath of the Party, or him that disbursed the Money for him, and shall renew the Commission at his own Costs. Ord. Chan. 132.

Where a Commission is lost by the Fault of him who had the Carriage of it, and is renewed, the other Side commonly hath

the Carriage of it.

And if a Commission become void by the Error of the Clerk in making it, the Costs, I think, shall generally be borne by him and that Side for whom it was taken out, and who had the Carriage of it.

After due Notice has been given, if the one Side produces and examines all his Witnesses, and the other Side does not, but prays a new Commission; if it be granted, he that prays it shall bear all the Charges of fuch renewed Commission, both in the Court and in the Country, and as well for the other's Commissions as his own; and the other Side shall be permitted to cross examine the Witnesses produced by him that renews the Commission. But if the other Side will examine any Witneffes of his own, then he shall bear his own Part of the Charge. The Charges above-mention'd to be ascertain'd by the Oath of the Party, or of him who disburfed the Money for him. Ord. Chan. 132.

He, at whose Instance a Commission is renewed after a former Commission executed and returned, and he by the Default of whom, or of whose Commissioners, a former Commission was not executed, and it is thereupon renewed, shall at his Peri

examine

n

C

fu

fic

w

cia

Wil

(a)

Ric

(A

on N

firft e

or w

produ

examine all his Witnesses on that renewed Commission, or shall examine them in Court by the End of the Term it is returnable, without any more or further Delay. Ord. Chan. 133.

Proceed we now to inftance some particular Cases proper to be taken Notice of

under this Head.

If a Defendant is to perfect his Answer upon Interrogatories, or to be examined for a Contempt, although the Rule of Court be, that he shall be examined in four Days, or stand committed; yet if the Party be in the Country, he shall have a Commission to take his Examination. I Vern. 187.

A new Commission will be granted, if Exhibits or Writings are altered or interlined. Hill. 25 Car. 2. Richardson and Low-

ther, I Chan. Ca. 273.

is

29

or

nd

ofs

im

the

of

tot

n'd

rty,

for

n is

exe-

fault

13, 2

and

Peril mine But where a Witness alledged that he had mistaken himself at a Commission; the Commission being returned, he came to London, and made an Assidavit that he was surprized; upon which a special Commission issued to re-examine the Witnesses, which was done accordingly: But this special Commission was suppressed by Motion, by Advice of the Master of the Rolls with the Six Clerks, as contrary to the (a) Course of the Court. Randal against (a) But the Richford, 1 Chan. Ca. 25. Eq. Ab. 102, present Prac-

Richford, I Chan. Ca. 25. Eq. Ab. 102. present Prac-(A.) c. 3. Nel. C. R. 92. S. C. tice is, to obtain an Order, on Motion and Affidavit of Surprize, to have the Witnesses examined

on Motion and Affidavit of Surprize, to have the Witnesses examined wive voce in Court, or his Depositions amended, the Witnesses being first examined before an Examiner; but when he is examined in Court, or when his Depositions are read, the Order for that Purpose must be produced in Court.

Dd 2

If after Publication any new Matter arises upon Debate, or Hearing the Cause, which may be thought material by the Court, a new Commission may be granted.

2 Chan. Ca. 75.

A general Affidavit of having material Witnesses beyond Sea, is not sufficient for a new Commission; but the Witnesses must be named in the Affidavit, and the Point mentioned to which they can materially depose. I Vern. 334.

The Ground for granting a Commission beyond Sea to examine Witnesses, must depend upon the special Circumstances of the

Case.

Where there shall be said to be sufficient Circumstances arising from the Nature of the Case, upon which a Commission for examining Witnesses beyond Sea ought to be granted. Vide Barnard. 193, 194.

If Commissioners misbehave themselves, the Court will grant an Attachment against them; but regularly a Commission cannot be suppress'd, but upon a Reference and

Certificate of Irregularity. Cary 43.

e

ta

25 25

eit

yo

tair

you

Wil

and

the

corp

three

gelifi Exar

ting

have

fame

loes e

A Commissioner may be examined as a Witness; but then he must be first examined; and if others be examined before him in his Presence, he cannot be examined afterwards, having heard the former Depositions; and for that Reason a Commissioner was examined in Court, his former Deposition being suppress'd. 2 Chan. Ca. 79.

When a Commission is returnable without Delay, if it be within this Kingdom, [if made out in the Vacation-time at any of the Seals after the Term] it must be returned

turned by the fecond Return of the next Term; if executed afterwards, it is void, and the Depositions ought to be suppress'd.

2 Vern. 197.

0

ft

ot

d

1

ni-

ore

ed

)e-

if-

01-

an.

bout

[if

of

re-

ned

But observe, that if a Commission be made out the first or second Seal before the Term, or the first Day of Term, returnable without Delay, the same Return holds good to the End of that Term.

### A Commission to examine Witnesses.

GEORGE the Second, &c. Tofidence of your Prudence and Fidelity have appointed you, and by these Presents do give unto you, any three or two of you, full Power and Authority, diligently to examine all Witnesses whatsoever upon certain Interrogatories to be exhibited to you, as well on the Part of A. B. Complainant, as on the Part of C. D. Defendant, or of tither of them; and therefore we command you, any three or two of you, that at certain Days and Places to be appointed by you for that Purpose, you do cause the said Witnesses to come before you, and then and there examine each of them apart upon the faid Interrogatories, on their respective corporal Oaths first taken before you, any three or two of you, upon the Holy Evangelifts, and that you do take fuch their Examinations, and reduce them into Writing on Parchment; and when you shall have so taken them, you are to fend the lame to us in our Chancery whereloever it fl.all then be, closed up and under Dd 3

your Seals, or the Seals of three or two of you, diffinctly and plainly fet, together with the faid Interrogatories, and this Writ. And we further command you, and every of you, that before you act in or be prefent at the Swearing or Examining any Witnels or Witnesses, you do severally take the Oath first specified in the Schedule hereto annexed; and we do give you, any three, two, or one of you, full Power and Authority, jointly or feverally, to administer such Oath to the reft, or any other of you, upon the Holy Evangelists. And we further command that all and every the Glerk or Clerks, employ'd in Taking, Writing, Transcribing or Ingrossing the Deposition or Depositions of Witnesses to be examined by Virtue of these Presents, shall before he or they be permitted to act as Clerk or Clerks, as aforefaid, or be present at such Examination, severally take the Oath last specified in the said Schedule annexed: And we also give you, or any one of you, full Power and Authority, jointly and separately to administer such Oath to such Clerk or Clerks upon the Holy Evangelifts. Witness Ourself at Westminster, the Day of \_\_\_\_\_ in the \_\_\_\_ Year of our Reign.

6

n

kr

en

cu

of W

faic

by

Pul

the

God

ties tranf

and

befor

Here put the Surnames of the Master of the Rolls, and the Six Clerk. Indorse on the Back of the Writ towards the Top, By Order of Court.

The Oaths annexed to the faid Commisfion are on unstamp'd Parchment; but the the Commission has a treble Six-penny Stamp.

# The Commissioners Oath.

YOU shall, according to the best of your Skill and Knowledge, truly, faithfully, and without Partiality to any or either of the Parties in this Cause, take the Examinations and Depositions of all and every Witness and Witnesses produced and examined by Virtue of the Commission hereunto annexed, upon the Interrogatories now produced, and left with you. And you shall not publish, disclose or make known, to any Person or Persons whatsoever, except to the Clerk or Clerks by you employed and fworn to Secrecy in the Execution of this Commission, the Contents of all or any of the Depositions of the Witnesses, or any of them, to be taken by you and the other Commissioners in the faid Commission named, or any of them, by Virtue of the faid Commission, until Publication shall pass by Rule or Order of the High Court of Chancery. So belp you God. to ve Chamber I make all processions

# The Clerk's Oath.

is the back made in a consent from that

y

of

n

6

ut

he

YOU shall truly, saithfully, and without
Partiality to any or either of the Parties in this Cause, take and write down,
transcribe and ingross the Depositions of all
and every Witness and Witnesses produced
before and examined by the Commissioners,

Dd 4

bereunto annexed, as far forth as you are directed and imployed by the faid Commissioners, or any of them, to take, write down or ingross the faid Depositions, or any of them. And you shall not publish, disclose or make known, to any Person or Persons whatsoever, the Contents of all or any of them, to be taken, wrote down, transcribed or ingrossed by you, or whereto you shall have recourse, or be any ways privy, until Publication shall pass by Rule or Order of the High Court of Chancery.

So belp you God.

# A Commission to examine a Defendant touching a Contempt.

GEORGE the Second, &c. To A.B. we in Confidence of your Prudence and Ridelity have appointed you, and by these Prefents do give unto you, any three or two of you, full Power and Authority, in Pursuance of an Order of our Court of Chancery, bearing Date the \_\_\_ Day of \_\_\_ last past, made in a certain Cause there depending, wherein A. B. is Complainant, and C. D. Defendant, diligently to examine the faid Defendant upon Interrogatories inclosed in these Presents touching a Contempt supposed to be by him committed: And therefore we do command you, any three or two of you, that at a certain Day and Place to be appointed by you for that Purpose, you do cause the said Defendant

ta

(

ing

CET

A ..

to I

Def

in t

man

at fi

thinl he c

take

torie

Evan

Commission to take a Defendant's Examination on Interrogatories.

.

t

at

br

ot ot

of

ere

nt,

ine

ries

on:

any

hat

ant

ta

TEORGE the Second, &c. To-Greeting: Know ye, that we have given unto you, any three or two of you. full Power and Authority, in Pursuance of an Order of our Court of Chancery, bearing Date the --- Day of --- made in a drain Cause there depending, wherein A. B. is Complainant, and C. D. Defendant, to take the Examination of the said C. D. Defendant, upon Interrogatories inclosed in these Presents: And therefore we command you, any three or two of you, that at fuch certain Day and Place, as you shall think fit, you go to the faid Defendant, if he cannot conveniently come to you, and take his Examination to the faid Interrogatories, on his corporal Oath upon the Holy Evangelists, to be first administred by you, any

th

an

De

fuc

ing

upo

to

fhal

out

fore

of y Day

app o

Man you

come

mine

togat

Dath

nore

nd t

ions

Parch

ore

ivide

arts,

arts (

o the

art t

0 allo aid H

ne ren

ant W

ou, o

entify

bancer id Co

any three or two of you; the faid Examination being distinctly and plainly wrote upon Parchment; and when you shall have so taken the said Examination, you are to send the same closed up, under the Seals of you, any three or two of you, together with the said Interrogatories and this Writ, unto us in our said Court of Chancery—wheresoever it shall then be. Witness Ourfelf at Westminster, the—Day of—in the—Year of our Reign.

# A Commission to examine Witnesses and divide Lands.

FORGE the Second, &c. To-Greeting: Know ye that we have, purfuant to an Order of our Court of Chancery, bearing Date the - Day of --last past, made on the Hearing of a certain Cause, wherein S. H. Widow, and M. H. are Plaintiffs, and Sir W. H. Bart and W. W. Big; are Defendants, fully and thorised and impowered you, or any two or more of you, to go to, enter upon walk over, and furvey the Manors of H- in the County of in the Complainant's Bill of Complaint particularly mentioned, and the fame to feparate, fet apart, and divide into three equal Parts; and to allot and appoint two third Parts of the faid T- and R- Estates to the Plaintiff S. H. and the other third Part thereof to the Defendant W. W. and to allot and appoint one third Part of the faid H. Estate to the Plaintiff S. H. another third

third Part thereof to the Plaintiff M. H. and the remaining Third thereof to the Defendant W. And for the better making fuch Divisions, to examine Witnesses touching the Values of the faid feveral Estates, upon fuch Interrogatories to be exhibited to you, as you, any two or more of you hall think proper, to discover and make out the Truth of the Premisses. Therefore we command you, any two or more of you, that you meet together at certain Days and Places by you for this Purpose appointed, and from thence go to, enter upon, and walk over, and furvey the faid Manors, Lands and Premisses; and that you do also cause the said Witnesses to ome before you, and then and there exanine each of them apart, upon fuch Interogatories, upon their respective corporal Daths first taken before you, any two or nore of you, upon the Holy Evangelists: nd that you do take fuch their Examinaions and reduce them into Writing on Parchment: And that you, any two or ore of you, do separate, set apart, and livide the faid Premisses into three equal Parts, and do allot and appoint two third Parts of the faid T—— and R—— Estates the Plaintiff S. H. and the other third ar thereof to the Defendant W. W. and pallot and appoint one third Part of the aid H. Estate to the Plaintiff M. H. and he remaining Third thereof to the Defenant W. And when you shall have so done, ou, or any two or more of you, are to mify and return into our faid Court of bancery, without Delay, wherefoever our id Court shall then be, your Facts and Proceedings

A S

ei.

A. 01

2,

ta:

rt

-

id

rd

Proceedings in the Premisses, by your Certificate, distinctly and plainly wrote upon Parchment, together with the said Examinations and Interrogatories, closed up, and under your Seals, or the Seals of any two or more of you, distinctly and plainly set, together with this Writ. Witness Ourself at Westminster, &c.

th

ot

it

fai

Pa

cee

Of i

W

ive

f th

he fo

N

W

ligh (

recte

a Ca

ainti

give

e faic

aintif

# Commission to assign and set out Dower.

GEORGE, &c. To --- Greeting: Know ye that we, in Confidence of your Prudence and Fidelity, have appointed you, and by these Presents do give unto you, any three or two of you, full Power and Authority, in Pursuance of an Order of our Court of Chancery, made in a certain Cause there depending, wherein A.B. is Complainant, and C. D. Defendant, bear ing Date the-Day of-last, to affign and fet out Dower for the aforesaid Complainant, out of all and fingular the Land and Tenements, being lately the Estate of - deceased, in the said Order mentioned, called - And therefore we command you, any three or two of you that you meet at a certain Time and Place to be appointed by you for that Purpole in Order to come unto, inspect and view the aforesaid Estate, Lands, and Premiss wherefoever they shall be found to be firuate, lying or being; and according to the best of your Skill and Judgment, to affign and fet out Dower for the faid Complainant, out of the aforesaid Farm, Land and Premisses; and doing in all and fingular

the Premisses, according to the true Intent and Meaning of these Presents and the aforesaid Order: And when you shall have thus done, that you transmit unto us in our said Court of Chancery, wheresoever it shall be, your Certificate concerning the said Complainant's Dower, ingrossed on Parchment, together with your other Proceedings in the Premisses, as is usual, with this Writ. Witness, &c.

#### CHAP. XI.

Of Examination of Witnesses, Evidence, Witnesses, and Proofs.

WHEN the Commissioners have received the Commission, they must sive Notice in Writing, to the other Side, of the Time and Place of executing it, in the following Form, viz.

B.

m-

nds

en-

ou,

ofe

ffes,

g to

, to

om-

and

ular

# Notice of executing a Commission.

Whereas we have received a Commif-Which is found iffuing out of his Majesty's ligh Court of Chancery, to us, and, &c. nected for the Examination of Witnesses a Cause there depending, between A. B. aintiff, and C. D. Defendant: These are give you Notice, that we will execute the said Commission on the Behalf of the aintiff, at the House of, &c. known by

### Of Examination of

the Sign of, &c. fituate in, &c. in the Coun. ty of - on - being the - Day of next enfuing, at the Hour of o'Clock in the Forenoon of the fame Day, when and where you, and your Commitfioners and Witnesses concerned may be present, if you please. Given under our Hands, this - Day of, &c.

To Mr. C. D.

E.F. G. H.

ь

21

fo

th

th

be led

and

not

on

in Har

1

B

you

feale

with

Subp

miffi

Witr

appe: ment

his o the I the (

Testifi

vill o wn .

f he

ment

net t

ointe

The

\* But where it is a short Vacation, as and Trinity Term, ten is good No-

This Notice is to be delivered to the Party, or left at his House with his Wife or Servant, \* fourteen Days before the Time of executing the Commission, as ha been before observed (except a shorte between Easter Time be appointed by Order of Coun which very feldom is done) or the Depos Days, or less, tions shall be suppressed. And the Wit nesses are also to be served with a Summor to appear before the Commissioners at the Time and Place, to depose their Know ledge to each Interrogatory; which Sun mons is in this Form:

A Summons for Witnesses to appear.

In Chancery.

Between A. B. Plainti and C. D. Defendant.

THereas we have received a Commi V fion iffuing out of his Majety High Court of Chancery, &c. (ut supri And whereas we are informed, That you whose Names are here under-written, material Witnesses for the Plaintiff (or De fendant]

fendant) in this Cause: These are therefore, by Virtue of the said Commission, to will and require you, and every of you, perfonally to be and appear before us, or any three or two of the said Commissioners, at the House of, &c. known, &c. in &c. on the — Day of — next, then and there to be examined, and to testify your Knowledge for and on Behalf of the Plaintiss; and you are then and there to attend, and not depart until you have been examined on the Part of the said Plaintiss: And herein you are not to fail. Given under our Hands, &c.

To N. M. P. R. S. T. W. E. &c.

ent.

自由

pre

y 00

De

apt

E. F. G. H.

But if a Witness be unwilling to come, you must get a Subpana ad Testificandum fealed against him, and serve him therewith, and deliver him one Shilling with the Subpana, and at the same Time the Commissioners Summons, as before; and if the Witness so summoned and served does not ppear, the Court will grant an Attachment against him, unless he comes up at his own Expence to be examined before the Examiner; or if he be summoned by he Commissioners without a Subpana ad Testificandum, and do not appear, the Court sill order fuch Witness to attend at his wn Expence, and to be examined; and f he disobey fuch Order, then an Attachment shall go against him.

The Commissioners and Witnesses being net together, at the Time and Place apointed, according to the Notice; the

Commission (which 'till that Time must tes main fealed) may be opened, that the Commissioners may see their Authority; and then they are to administer the Oath to each other, and also the Oath to the Clerks, annexed to the Commission, as aforefaid.

After the Oaths are administred, the Commissioners and their Clerks begin to execute the Commission; and having before them the Interrogatories both for the Plaintiffs and Defendants, the Commission ners present must fign their Names at the Bottom of both the Interrogatories; and then one of the Commissioners, or Clerks, draws up the Stile of Title of the Depositions, preparatory to the Examination of the Witnesses, in Paper, usually thus:

be

the

nei

Ro

Wi

(

inte Wit

nini owe itle

ess,

ake

ou up

Aff

all f

thing

The

s's

n an per,

. A

ves e

atori

erein

rogate

the V

On the Behalf of the Plaintiff.

-800 3 2

Depositions of Witnesses produced, sworn and examined on the -- Day of -- in the - Tear of the Reign of bis Majesty King George the Second, and in the Year of our Lord 1744. at the House of A. B. known by the Sign of the - fituate in the Parish of C. in the County of D. by Vir tue of a Commission issuing out of bis Majesty's High Court of Chancery, to us E. F. G. H. J. K. and L. M. directed, for the Examination of Witnesset in a Cause there depending between A. B. Plaintiff, and C. D. Defendant, on the Part and Behalf of the Plaintiff!

We the said Commissioners, also the respective Clerks by us imployed for taking and ingrossing the said Depositions, having first taken the Oaths annexed to the said Commission as thereby required.

Then the Commissioners call a Witness before them, and cause all Persons, but themselves and their Clerks, and that Witness that is to be examined, to leave the Room, and then they administer to the Witness his Oath.

One of the Commissioners taking the interrogatories, and producing them to the Vitness that is to be examined thereto, administers the Oath to such Witness, as followeth: The Commissioners may read the sitle of the Interrogatories to such Witness, and then say, Tou are true Answer to take to all such Questions as shall be asked on upon these Interrogatories, without Favour Affection to either Party, and therein you all speak the Truth, the whole Truth, and thing but the Truth.

10

7#

be

715

Se-

011

of

the of

Vir

out

t d

. H

nelles

g be-

Part

ntiff:

114

So belp you God.

The Oath being administred, the Witis's Name and Place of Abode, Addiin and Age, are to be writ in the same
per, under the Title Of the Depositions,
is. And the Commissioners must themves examine the Witnesses on the Intercatories, and not leave it to their Clerks;
erein they are to examine but to one Introgatory at a Time, and shall not read
the Witnesses another Interrogatory 'till

E e they

they have gone through and answered the former: And the Commissioners shall likewife take down what comes from the Wirnesses on their Examination, and not permit them on their own Reading of the Interrogatories to fet it down themselves: but the Depositions must be carefully read over to such Witness, and if upon such reading any Thing is mistaken that the Witness cannot swear to, after he has been examined, the Depositions must be reclified; which done, the Witness must fign his Name or Mark to such Depositions as he is examined to. A Witness may be allowed to use short Notes which he brings with him to help his Memory; though not the Substance of the Depositions, nor may he transcribe Verbatim such Notes. And the Commissioners ought not to ask any idle Questions, or such as are foreign to the Interrogatories, nor fet down impertinent Answers, but only what are material on the Points interrogated.

If any Practifer, or other Person, goes about to tamper with, or suborn any Witness, upon Complaint made thereof, and upon Examination of the Matter upon

Oath, he must stand committed.

The Names and Additions of the Witnesses, &c. and their Depositions or Answers, are thus put down:

A. B. of — in the County of — Gent. aged — Tears and upwards, being produced, sworn and examined on the Behalf of the Plaintiff (or Defendant) deposeth as solloweth:

Imprimis,

Imprimis, To the first Interrogatory this Deponent faith, That, &c.

Item, To the fecond Interrogatory this De-

ponent faith, &c.

And so proceed through the rest of the Interrogatories.

If a Commission be adjourned to another Day and Place, and Witnesses are examined, the Time and Place where such Examinations were taken, ought to be mentioned and set down in the Title of the respective Depositions.

If there be any Writings directed by the Commission to be proved, the Commissioners are to give Directions to bring them in for that Purpose; and after they are proved, Exhibits may be made of them.

And the Exhibits must be indorsed after

the following Manner:

0

-

al

es

t-

be

on

it-

n-

911.

ed,

the

fol-

nis,

Between A. B. Plaintiff, and C. D. Defendant, Dec. 1744. At the Execution of a Commission for Examination of Witnesses in this Cause, this Deed or Parchment, or Paper Writing was produced and shewn to E. F. and by him deposed unto at the Time of his Examination to the third Interrogatory on the Plaintiff's Part, and was also produced and shewn unto, &c. and by him deposed, &c. before us,

E. F. G. H.

E e 2

When

When the Witnesses are examined, the Depositions are to be ingrossed on Parchment, in like Manner as the Interrogatories, and examined carefully with the Paper Draughts; after which the Commissioners fign fuch Schedule or Skin of Parchment of the Examinations, and also the Interrogatories, and then bind them up together with the Commission, usually (called making up the Commission) with some red Tape or other String, fetting all their Names and Seals upon the same; but before the Commission is sealed up, they are to indorfe upon the Back of the Commiffion towards the Middle thereof The Axecution, to which they likewife fubscribe their Names, as followeth; bean low bus

The Execution of this Commisfion appears in a certain Schedule (or Schedules) to this Commission annexed, TI.E Commissioners have as fees with

.H.Dea a Day each, and their Clerks ingroffing, &c. fuch Fees as the Commit

a

Co

When the Commission is executed and made up, the Paper Draught is to be also fealed up as above, and delivered to one of the Commissioners to keep; and sometimes it is cut in two in the Middle, and one Part thereof is delivered to one of the Plaintiff's Commissioners to keep, and the other Part is delivered to one of the Defendant's Commissioners to keep; and the Commissioners must deliver the Commission, the Label thereof hanging out at the End, personally to the Person that brings it to Town, who is to deliver it to a Master in Chancery, or more

more usually to the Clerk in Court who had the Carriage of the Commission, who indorses the same thus:

of L. M. Before -

When a Person swears it, he goes before a Master, commonly at the publick Office, where he makes Oath, That he received the Commission from the Hands of two or more of the Commissioners therein named, and that it has not been opened nor altered since he so received it.

But if the Commission is carried by one of the Commissioners, no Oath is required; and you need only indorse,

23d July 1744. Received by the Hands of E. F. one of the Commissioners.

The Commissioners have as Fees usually a Guinea a Day each, and their Clerks for ingrossing, &c. such Fees as the Commissioners commonly settle among themselves, and all Charges of Eating, Drinking and Entertainment born; and the Person that carries the Commission is usually allowed five Shillings for his Trouble.

d

lo of

es

rt

rt

n-

ers

pel

lly

ho or ore N. B. On Delivery of the Commission, the Examinations or Depositions are not to be opened or copied, until Publication is actually passed.

Thus much with Respect to the Examinations of Witnesses by Commissioners in the Country; let us consider in the next Place

e 3

of Examining Witnesses by Examiners in Court.

If the Witnesses live in Town, and you have no Occasion to go to Commission in the Country, (or after you have examined some Witnesses in the Country, and have others to examine in Town) then exhibit the Interrogatories in the Examiner's Office, and get a Rule entered to produce Wirnesses; and after they are examined, a Rule to pass Publication.

If a Witness is willing to be examined, and will attend without a Subpana served on him, you need only to appoint a Time with the Examiner, who is to examine him; and then give the Witness Notice; or attend with the Witness upon the Examiner, at the Time appointed, who will then examine him, after he has been sworn to the Interrogatories before a Master, and produced and shewn to the adverse Clerk in Court, as hereafter.

But if a Witness refuses to be fworn willingly upon Interrogatories, you must serve him with a Subpana, and at the fame Time deliver him one Shilling, and if he refuses to come and be fworn upon fuch Service, you are to make an Affidavit of fuch Service of the Subpana; which being filed, you then apply to your Examiner for a Certificate that fuch Witness is not sworn to the faid Interrogatories: And upon that Affidavit and Certificate your Counfel moves the Court, of Course, for an Order that such Witness do in four Days after personal Service attend, and be fworn and examined to the faid Interrogatories, or in Default

n

ce

ri be

u

th

Se

Default thereof he is to stand committed to the Fleet Prison. And such Witness being personally served with such Order, and still refusing to be sworn and examined to the Interrogatories, upon Affidavit being made and filed of the personal Service of the faid Order, and the Examiner's Certificate of his not being examined, your Counsel moves again, of Course, and obtains another Order that fuch Witness do stand committed to the Prison of the Fleet; which Order you deliver to one of the Tipstaffs belonging to the Court of Chancery, and he gets a Warrant thereon figned by the Lord Chancellor, and by Virtue thereof apprehends such Witness, and then carries and delivers him to the Warden of the Fleet, and he is to remain in Custody not only till he has been examined upon fuch Interrogatories, but also paid the Plaintiff his Cofts he has been put to about him, to be taxed by the Master, besides the Tipstaff's and Warden's Fees for taking and detaining

The like Method is to be taken against a Witness who is sworn to the Interrogatories, and refuses afterwards to be examined there-

upon.

e

11

n

d

il-

ne

es

e,

7-

ed,

er-

to

nat

fel

der

ter

ind

in

ult

The Witnesses or Parties to be examined, must be first sworn before a Master in Chancery, to answer truly to the Interrogatories; and their Names who are sworn must be inserted by the Examiner, or his Clerk upon the Interrogatories, and then before they are to be examined, they are introduced into the Six Clerks Office, by the Examiner's Clerk, and produced at the Seat of the adverse Clerk in Court, where E e 4

the Examiner's Clerk is to leave a Notice in Writing of the Name and Place of Refidence of every fuch Witness Vide Ord. Chan. 126.190799 of viered nadt allie radio

If a Witness be examined by Commisfioners in the Country, he shall not be examined again here in Court without a special

Order for that Purpole.

Witnesles de bene effe, and establishing their Testimony in perpetuam Rei Memoriam.

Of examining . Witneffes are fometimes examined in perpetuam rei Memoriam to preserve their Testimony in Case of Death, &c. and their Examinations may be taken either in Court or by Commission; and the Method of obtaining fuch a Commission, is by filing a proper Bill for that Purpose. Vide ante.

> And after the Bill is filed, the Court, on Affidavit made that the faid Witneffes are old, infirm, going beyond Sea, &c. fo that the Party is in Danger of lofing their Testimony, if they live in the Country, will grant a Commission; or if they are within ten Miles of London, will order them to be examined in Court de bene effe, which will make their Depositions valid in that Cause only, and against those who are Parties to it; but if it appear, that they might afterwards have been examined in Chief; regularly, fuch Depositions shall mot be made use of : But if the Witnesses live till they can be examined in Chief, they must be examined over again as other Witnesses in Chief are; but if they die in the mean Time, or are not returned from beyond Sea, then their Depositions are to be published in such Manner as is shewn hereafter. And the Depositions taken in such Cases, will not only bind the Parties in that and an fome Cales, with by

ti

P

th

th

ple

to An

cro

rily

yet

all other Suits, but likewise all those claim-

ing by or from them.

Examination de bene effe is used in many other Bills than barely to perpetuate Teftimony: As where one Man brings a Bill against another, and hath a most marerial Witness to examine, upon Affidavit that this Witness is in a languishing Condition, or in danger of Dying, before he can be examined in Chief, or where he is going a long Voyage, from whence he cannot return by the Time he is to be examined in Chief, and to which Place he is bound, and cannot possibly stay; in either of these Cases, upon Motion or Petition, and making an Affidavit of fuch Witness being very old, or fick and infirm, or going speedily beyond Sea, and is a very material Witness for the Plaintiff, the Court never denies to make an Order to examine fuch a Witness de bene esse, faving just Exceptions to the other Side. For this Affidavit and Petition, vide under the Title on thefe Heads. will make their Depositions

But if the Party interested shew Cause to the contrary allowed by the Court, then the Plaintiff is to desist from examining such Witness.

r-

10

f,

se.

ill

es

nd

b-

er.

es,

nd all If by Commission, he may examine exparte, or the Desendant may come in by Appearance and join in Commission, if he pleases, and then sourceen Days Notice is to be given of executing the Commission: And the Desendant may by Interrogatories cross examine such Witness, if he thinks sit.

Though the Depositions are not ordinarily to be published while the Witnesses live, yet in some Cases, as by Consent of Parties upon Oath, or that the Plaintiff by fome Trial at Law wherein he shall need them, and that the Witnesses are not able to travel; or for other good Reasons, the Court will sometimes (the very rarely) order Publication in the Life-time of the Witnesses; and then the Party may copy the Depositions, and they may be given in Evidence in any other Court, by Order of this Court.

If a Matter is properly triable at Law, as a Title, and the Plaintiff can have no Opportunity to try it there; this kind of Bill is not to be brought here till the Party hath affirmed his Title at Law; if he should, it will be dismissed upon a Demurrer.

These Depositions are not to be given in Evidence, or made use of against any others but the Desendants who were sub-poena'd to desend the Matter, or some claiming under them, whose Interest accrued since the Bill preserved.

tr

vi

de

Sp

th

an

per

the

fan

IV

Eli

God

185

Equ

Viva

Wan

10

When Lands are devised by Will from the Heir at Law, and there is no Occasion or Opportunity to prove or establish it at Law, it is often necessary to prove such Will in Chancery, to perpetuate the Testimony thereof; the Way to do which is to exhibit the Bill against the Heir at Law, and set forth the Will in bac Verba. And the Desendant having answered, they proceed to Issue as in other Cases; and then examine the Witnesses to the Will, or prove their Hands, if they be dead. The Will (if Witnesses are examined in Town) must be left in the Examiner's Office to be examined to; which done, and Publication

passed, the Cause is at an End, an Order,

or Rules, being first obtained for Publication: And the Defendant, who is the Heir at Law, and examines no Wirnesses touching the Validity of the Will, may give Notice of Motion for the Plaintiss to pay him his Costs to be taxed by a Master, which the Court usually orders.

Commonly where an Estate is considerable, the Plaintiff is at the Charge of an Exemplification of the Proceedings of that

Caufe.

t

n

)-1e

C-

m

on

ch

ti-

to

w,

10-

ien

ove

Vill

uft

xa-

tion

der,

10

But the this Court suffers Examinations to perpetuate the Testimony of a Will, yet it will not barely try the Validity of a Will; but if the same come collaterally in Question upon a Bill for the Performance of a Trust, or touching a Devise out of Lands, &c. the Court generally directs an Issue at Law to try the Validity thereof.

Though there be Goods and Chattels devised by the same Will, whereby Lands are devised; yet the proving thereof in the Spiritual Court, is of no avail in respect of the Lands; and this Court may prohibit the Spiritual Court to meddle in the Proof any farther than concerns the Goods or

personal Estate, &c.

The Proceedings on a Bill to perpetuate the Testimony of Witnesses are mostly the same as others. See more upon this Head, I Vern. 452. I Vern. 331. Vide I Salk. Cro. Eliz. 352. Hard. 332. Raym. 335. Hob. 112. Godb. 336. I Vern. 105. 2 Vern. 159. I Vern. 185, 308, 441. I Vern. 354. Maxims of Equity 33.

With Regard to examining Witnesses Viva Voce, 'tis incumbent on the Party who wants to examine to produce his Witnesses

10

in Court, at the Hearing, having first obtained an Order for that Purpose, and also the Exhibits, which are deliver'd together with the Order to the Register in Court, and the Court examines the Witnesses accordingly.

Of the Sufficiency and Disability of a Witness. A Party interested, by releasing his Right, may be a Witness. 2 Vern, 375. Culpeper and Fairfax S. P. 2 Vern. 472. Callow and Minure.

b

tl

b

in

at

ca

hii a

Pe

25

Pla

wa.

beri

Cau

73.

Moi

T

Cou

A Bankrupt by Releasing to the Assignees, may. 2 Vern. 637. But whilft he continues interested, he can by no means be a Witness. 2 Vern. 463, 464. Needbam and A Legatee of a small Legacy, as five Shillings to a private Person, or five Pounds to a Nobleman, may be a Witness for the Will. I Vern. 254. A Person difinterested when examined, becoming interested afterwards, yet his Examination may be made use of. Trin. 1702. Holcroft and Smith: But cannot be made use of at Law. 2 Vern. 699. A Witness appearing to be interested, tho' he swears he hath received Satisfaction, yet is not a competent Witness, for the Law will not suffer him to swear this, but the Release or other Act destroying his Interest must be proved. MSS. Anon. Mich. 11 Plaintiffs cannot be examined for Geo. 2. each other, but Defendants may. 230. 2 Chan. Ca. 214. Mich. 1715. Cafey and Beachfield. Gilb. 98. Preced. in Chan. 411. A Commissioner may, but he should be examined before any other Witness. I Vern. 369. An Arbitrator may. I Vern. 157, 158. Members of a Corporation cannot. Vide I Vern. 254. 2 Vern. 317. A Wife cannot against her Husband; unless in

in Case of extreme Necessity. Vide 2 Chan.

Ca. 39. 2 Vern. 79.

d

d

as

re

ſs

1-

ıt-

be

b:

rtt.

d.

on,

aw

he

est

11

for

2711.

ifey

an.

uld ess.

ern.

an-

A les in

Note, That if a Plaintiff wants to examine a Defendant as a Witness, he must obtain an Order by Motion or Petition for that Purpose, which Order is of Course, and must be served on the adverse Clerk in Court; also the Defendant may obtain the like Order to examine a Co-Defendantas a Witness for him; but all these Orders are upon Suggestion, that the Defendant is not concern'd in Point of Interest in the Matters in Question, and they are never granted but with a Clause of (saving just Exceptions to the other Side) and this must be made at the Hearing of the Cause; and this Order for examining a Defendant must be produced at the Commission-Office, or in the Examiner's, when the Defendant attends to be examined, without which he cannot be examined; for it is by Virtue of that Order they are impower'd to examine. him, and they can't do it otherwise. a Petition to examine a Defendant, vide Petitions.

A Bill in another Cause is not to be read What shall be as Evidence against the Person named admitted as Plaintiff in it, unless it be proved, that it Evidence, and will amount was exhibited with Privity. Wollet and Ro- to fufficient berts, I Chan. Ca. 64.

When the Depositions taken in a former Cause shall be made use of, vide I Chan. Ca. 73. 1 Vern. 413. 2 Vern. 447. This is done by Petition to the Master of the Rolls or Motion to the Court.

That a Man's Answer in the Spiritual Court, or voluntary Oath before a Justice

of the Peace, may be read against him in

Chancery, by Order, vide Vern. 73.

If a Man unnecessarily makes any one a Defendant, he thereby cuts himself off from the Benefit of his Evidence, for it is his own Fault.

But where feveral are made Defendants, it will not hinder any one of the Defendants from the Benefit of the Evidence of any

others that are made fo.

Indeed in Case of Trustees, it is necessary that they be made Defendants, and therefore there the Plaintiff may have the Benesit of the Evidence. Gibson and Albert,

Lucas's Rep. 19, 20.

But it is the settled Practice, that one Desendant's Answer cannot be read as Evidence against another Desendant; and therefore if you want his Evidence, you must apply by Petition or Motion, as before observed.

When Copies of Notices admitted as Evidence, vide Winne and Loyd, 2 Vern.

603.

The Copy of a Deed inrolled for fafe Custody, admitted as Evidence. Combes and Spencer, 2 Vern. 471. 2 Vern. 591. S. C.

Confessing a Matter by Answer, sufficient Evidence. 2 Vern. 380. Vide 1 Vern. 452.

S. P.

A Settlement made pursuant to Marriage-Articles, Evidence that all Treaties were resolved into that. 1 Vern. 369.

A Purchaser who buys in a precedent Incumbrance, not obliged to prove the actual Payment of the Money. 2 Vern. 279. and vide 1 Vern.

An

I

0

al

of

L

of

a

ne

co Pa

wl

wh

to

W

nal

2 1

Ver

Tre

the

tor

Ho

ted

the

plic

clara

P

An injured Party's Oath good in Odium Spoliatoris. I Vern. 207, 308. S. C. cited.

One Witness against a Defendant's Answer not sufficient. Alam and Jourdon, i Vern. 161. 3 Chan. Ca. 123. S. P. Vid. 2 Vern. 554.

The Oath of the Party is ever looked upon in Equity to be as good as the Oath

of a fingle Person.

Where the whole Proof of any Matter arises from the Defendant's Answer, the Answer must be taken intire, and no Part of it impeached by any other Evidence.

Lucas's Rep. 405.

3

ı.

e

3

2.

es

ıt

10

Q.

n

Yet observe that Cases may, and do often happen, where the Court may ground a Decree upon the Oath of a single Witness, attended with other Circumstances to corroborate it; as where the Answer of the Party appears to be notoriously falsify'd, by which Means it comes to lose that Credit which otherwise it would and ought justly to have.

To shew that the Testator intended his Where Parol Wise and Executrix should have the person or collateral nal Estate exempt from Debts and Legacies. Evidence will be admitted 2 Vern. 252. and vide 1 Chan. Ca. 196. 2 to explain, Vern. 99. 5 Co. 67. 2 Vern. 98, 337, 625. confirm, or Treatise of Eq. 126.

Parol Evidence of the Person who drew what appears the Will, admitted to shew what the Testa- of a Deed or tor intended to pass by a Devise of his Will.

Houshold-Goods. Vide 2 Vern. 517. Admit-

ted to shew, that Grandchildren born after the Will, should take. 2 Vern. 378.

Parol Evidence where to explain an Implication in a Will or Deed, or upon a Declaration and Promise, have been allowed in this this Court. MSS. Ca. in Chan. Docksey against Docksey, Hill. 6 Ann. Ibid. Lamplugh against Lamplugh, Mich. 8 Ann. Ibid. Harris

against Horwell, Mich. 7 Ann.

Where a Testator has given Instructions for his Will, and before it could be executed, died; the Instructions, and not the Draught according to the Instructions, ought to be proved, for they are the Will and not the Draught. MSS. Ca. in Chan. Shess against Pelbam, Mich. 8 Ann.

Parol Evidence admitted, to shew that the Devisee promised the Testator to pay an Annuity. Oldbam and Litchford, 2 Vern.

506.

Always admitted to ascertain the Person, or the Thing described. Hodgson and Hodgson, 2 Vern. 593.—To oust an Implication. 2 Vern. 648, 736. S. P. Parol Proof admitted, to shew that a Legacy greater than a Debt due to the Legatee, was not in Satisfaction of the Debt. 2 Vern. 593, 594.

l

tl

ne

th

W

da

Int

bei

Co

bein

Par

Tef

be |

Re-

Alle

Publ

mine

Ca.

T

If A. purchases in the Name B. A. may be admitted to prove that he paid the Purchase Money, and so make it a resulting Trust, or Trust by Implication of Law for

himself. I Vern. 366.

2

An Entry in the Steward's Book, and Parol Proof by the Foreman of the Jury, admitted as good Evidence, that a Feme Covert furrendered her whole Estate, although the Surrender upon the Roll, and the Admission thereon, was but of a Moiety. 2 Vern. 547.

A Will not attested and a Codicil attested is no Publication of the Will. 2 Vern. 597. Preced. in Chan. 270. Rep. in Eq. 5. MSS.

Ca. in Chan. The Attorney General against

Baines, Hill. 6 Ann.

1

g

or

be

y,

ne 10'

d-

2

ted 97.

SS.

Ca.

A Will duly attefted, and a Codicil not attested by three Witnesses according to the Statute, is not good, so as that any Person can take any Estate under the Codicil. MSS. Ca. temp. King C. Attorney General against. Hickman.

A Master examined a Witness thrice to Of examining a Matter of Account, and the Depositions Witnesses, ex-

were suppress'd. 2 Chan. Ca. 79.

If an Interrogatory be leading, that is terrogatories, fufficient to suppress the Deposition. 2 Vern. suppressing 472. Yet after Interrogatories, and the De- their Deposipositions of a Witness thereon, had been tions. suppress'd, because the Interrogatories were leading, and then Publication passed; and the Court being moved, that new Interrogatories might be drawn and fettled by the Master, for the Examination of this Witnels, whose Evidence was very material, though the Practice was admitted to be always against it; and it was urged to be of dangerous Consequence; yet one Precedent being produced to this Purpose, and the Interrogatories which had been suppressed being fuch as might be drawn by many other Counsel, without any Apprehension of their being leading; the Court, to permit the Party to have the Benefit of his Witness's Testimony, order'd new Interrogatories to be put in and fettled by a Master, for his Re-examination. Trin. 1718. Spencer and Allen.

Though the general Rule be, that after Publication, no new Witness can be examined, nor a Witness before examined reexamined +

hibiting In-

fer forth by Motion and Affidavit, the Rule may be dispensed with. I Chan. Ca. 228.

2 Chan. Ca. 75. I Chan. Ca. 25.

Upon Motion for Leave to examine after Publication, upon making the usual Affidavit of not having seen the Depositions, &c.

Lord Keeper declared, that in such a Case, the other Side should be at Liberty to examine at Large, as well as cross examine the Witnesses, produced by the Party who

made the Motion. I Vern. 253.

If Interrogatories are exhibited in the Examiner's Office, and Witnesses examined thereon, either Party may, without any Order for that Purpose, exhibit new Interrogatories for further Examination of the same or other Witnesses: But when a Commission is issued, no new Interrogatories can be exhibited before the Commissioners, without Motion and Leave of the Court. Pasch. 1714. Andrews and Brown.

In the Qualification of Witnesses, Equity follows the Law: And if a Man be render a infamous in Law; as by an infamous Judgment, or wants Discretion and Understanding, his Testimony is to be rejected. And the Cases where the Party is concerned in Interest, the never so small, have usually prevailed, unless in special Instances: And herein it must be considered whether their Interest is so great as it may be presumed

t

fi

nF

B

L

ta

to

C

mi

the

ye

ter

to make them partial, or not.

a promise of

As to Evidence, the usual Course in this Court is by Depositions, for no Witnesses Viva Voce are allowed at the Hearing, except by special Order. And there being the

same Question in both Causes, and the Defendant's Defence being the fame, the Depolitions in a former Caule by Order of Court shall be read against him. But Depositions in another Cause, in which the Matters in Question were not in Issue, shall not be read. So Depositions taken in a Suit betwixt other Persons are not to be given in Evidence; for he had no Opportunity to cross examine them. So Depofitions taken in a Cause, where the Plaintiff's Father was a Party to the Suit, being in all Matters the same, his Father being only Tenant for Life, those Depositions could not be read against him; for the Advantage ought in all Cases to be reciprocal. And where a Cause is dismissed, the Matter of it not being proper for Equity to decree, yet the Fact in this Cause proved, may be used as Evidence between the same Parties, whenever it shall come in Question again. But when a Cause is dismissed, not upon this Ground, but for Irregularity, fo that in Truth there was never regularly any fuch Caufe in the Court, and confequently no Proofs, those Proofs cannot be used: For Proofs cannot be exemplified without Bill and Answer, nor can they be read at Law, unless the Bill upon which they were taken can be read. No Depositions ought to be allowed which were not taken in a Court of Record. And they are like Examinations of Witnesses. So that although the Defendant may read what Part he will, yet the other Side may read the whole afterwards. And there. Ard there. sbrawrss

0

e

d

y

r-

he

m-

an

rs,

irt.

ity

rd

dg-

na-

And

d in

ally

And

their

med

this

reffes , ex-

g the

fame

Ff 2

Note;

### Of Cramination of &c.

Note; Exhibits proved by Depositions must be shewn at the Hearing, if the Party would have any Benefit by them.

Depositions of Witnesses taken in Ireland. allowed good Evidence in Chancery here. Lord Altham v. The Earl of Anglesea, Gilb. 16, 18. he meddenad of bear od sen suid bereits - Buc Potalis on Bally be

change of her by top contable the bold tusities to crain passage event. So Depo-Thening on the way we folded a market spoin

### Saplar was a Party to the Salt, being in all The actor of the same and the same Co. Zi di di di di di not be told a shall blant for the Advan-

rand outflot to six Cotos protes branch branch where a Cante is definited, the dist-

Digh Court of Chancely. may be ofed as Mydance bere cen the fune

nailes Con Land Each a sand a Contract open this c. Lord Come drop d finite, a ner

THE Right Honourable Paris Lord

Por Proof Mafter of the Rofts, be rad at

The Right Honourable William Process

a ai ester mo une doids ba LIST

ma

San

Spi

yer

come of Mafter chem Lags, are the Eca-

Simuel Burroughs, Anthony Allen Michael Spicer, Richard Edwards, Edmund Mote;

Jer, Henry Montagne, Blorg.

Contains of the conflict aken in frebut allowed the Lord Lord Charcery here Lord and any conflict Anglelog. Cit.

North Babibas proved by Depo

# In T. Secr. Go Paw Long Come Arts

Richard Rain for 9 Oleph Donne, Bfpr.

## OFFICERS

H T H O

## high Court of Chancery:

Necessity General.

Lord Chancellor. and I disM

THE Right Honograble Philip Lord Hardwicke.

Master of the Rolls.

The Right Honotirable William Fortescue, Esq;

Ef

r

1

man

Spir

197

Masters in Chancery.

Robert Holford, William Kynaston, Thomas Bennet, Francis Elde, Mark Thurston, Samuel Burroughs, Anthony Allen, William Spicer, Richard Edwards, Edmund Sawyer, Henry Montague, Esqrs.

F f 3 Chief

Chief Register.

Charles Duke of St. Albans.

Deputy Registers.

James Scot, George Edwards, Jun. Efgrs, Deputy Registers to the Lord Chancellon.

Richard Rainsford, Joseph Donne, Efgrs, Rolls Registers.

Thomas Parnel, Efq; Clerk of the Reports and Cuftody of the Entry Books, A represent

George Edwards, Sen. and Joseph Baynton, Efgrs. Entring Clerks,

Accomptant General. , 15 118

Jo

W Sa

Wa

Brif

Fr

Samuel John, Charle 19 4 4 4 Aram

HE RIFFERINGE Philip Lord

Hardwicke.

Bilbop

AND MORESTON Elfer

1. Thomas Bridges, modiyanod

2. John Collins,

HARMY CO

3. John Hamilton,

4. Samuel Reynardson, ono I sais A ad'I'

S. Haac Whittington, enorghithid sand ..

6. William Mitford, Efgrans , mgirwnia W William Lipygon, Nath Malon,

Robert Holford, William Kynaffon, Thorn mas Bennet, Marion Darks ark Thurston. unbel Burrought, Anthony Allen, William grand the state of the state of

Vacaut.

# Sworn Clerks and Waiting Clerks, in each respective Six Clerk's Division.

## Sworn Clerks.

1. Thomas Marriot, William Neale,
Thomas Powell, \*——, Sackvill Am- Vacant Seat.
herst, Fountain Wentworth Osbaldiston,
Thomas Whitfield, Giles Stuart, George
Townsend, —— Scrope.

### Thomas Parne Clerks. Waiting Clerks.

Alexander Kellet and \_\_\_\_ Hutton.

## Ryall Hanto Sworn Clerks. Law hand Arenos

# Waiting Clerks.

Wa

San

E

Waif Brift

A

Migs

1

Donnythorne and Sesmon Vacant Seat.

# of Line Same Clerking Con Con Land 1.08

3. James Brackley, Richard Davis, John Wainwright, Samuel Roycroft, William Briftow, William Hodgfon, Nath Mason,

—— Bishop \*———, ———— 2 Vacant

### Waiting Clerks. Hall as mod I'

Francis Awse and Phineas Andrews.

Ff4

Sworm

### Cerks Clerks ....

· Vacant.

4. Francis Dalton, John Poole, Richard Comyns, \* ———, James Clarke, Charles Bicknell, George Trafford, John Fawkes, John Coleman, William Sneyd, John Tafker, ——— Bateman.

# Waiting Clerks-nid W spani

Henry Legh and Francis Dowfe.

### Sworn Clerks.

5. Thomas Melmoth, Thomas Halfpenny, Edmund Bridges, Thomas Cremer, Richard Palmer, Francis Newdigate, ——Bower, Maurice Robinson, —Brockett, ——Mawhood.

### Samuel Tobas Cathe Clerks O ando I sum ?

2 Vacant.

Francis Mitchell and \*

## and bran in Sweet Clerks Tome

6. James Brougham, Barrington Horsemonden, Joseph Nichols, Robert Handley, James Lawson, Richard Middleton, John Wilson, John Coker, Richard Fleming, Templeman.

# Waiting Clerks.

Francis Awle and Phiness Andrews.

VEA

Thomas Fell and George Wade.

223

Spiritary C.

Mafters

le

m

THERE Y W

JABUST S

Masters of the Subpoena Office.

Pauncefote Green and Thomas Head.

Abraham Hancock, their Deputy.

Register of the Affidavits.

Jeromy Sambrooke, Efq; John Roberts, Deputy-Register-

Principal Examiners.

Arthur Trevor and Edward Northey, Efgrs.

Thomas Melmoth, Thomas Halfbein ...

William Rawlins, John Nourse, John Peck, Josiah Shaw, Barnabas Richards, John Turner.

Copying Clerks.

Peter Bennett, Thomas Cheyne, James Harvey, Tamerlane Gwillim, Richard Butler, Josiah Burgis, Francis Stephens, Thomas Burgoyne, Thomas Burgoyne, Thomas Burgoyne, Thomas Burgoyne, Thomas Burgoyne, Thomas Cheyne, James Wellbard Thomas Cheyne, James Harvey, Tamerlane Gwillim, Richard Butler, Josiah Burgis, Francis Stephens, Thomas Burgoyne, Thomas Cheyne, James Harvey, Tamerlane Gwillim, Richard Butler, Josiah Burgis, Francis Stephens, Thomas Burgoyne, Thomas Cheyne, James Harvey, Tamerlane Gwillim, Richard Butler, Josiah Burgis, Francis Stephens, Thomas Burgoyne, Thomas Cheyne, James Harvey, Thomas Cheyne, Thomas

lames Lawfortent at Arms ofwa I coms

Stephen Jephion, Efq; and and and and and will will be the state of th

Warden of the Fleet.

John Eyles, Efg; oad ban Hall asmod I

eleters

,

n

6

TS

Ufber.

W Transfer

Wholey.

### A Lift of the Officers, &c.

sing som Ufber.

Dennis, Efq; noon or horn and

Deputy.

Charles Gold.

Clerk of the Chapel of the Rolls. ben Roberts Depar

Regifter of the sin

Henry Rooke.

Arthur Tre Subgreitsdwatel Morthey, Elfers.

Principal Examiners.

TO BE EVERY Comits on Stepelie.

For every the half bur para, the hides the half and Seal. For every local Subpanasepewed o

Peter Bunert, Thomas Cheyne, James

Barvey, Tamerlane Coulding Richard Butmas Bur coyne. of the Six Cloths

Serjeant of Arms.

OT TABLES ceedings filed in the Six lerks Office of the Service of Plack

Cycle Edgmany and of mo

F

Fo

Fo Fo

Cle Cop

Out

B

iñ

SI

bewegs

Bles, Aniwers and Proceedings in the fame Office, perf Sein .

# Diblown senday

### Subpœna Office.

the Rule to answer, inclu-

For every Philamation and Di-

For every Special Decimins by?

For every special Commission the dividing Lands, and al-

TOR every commom Subpana. o. 4 0 For every common Subpana renewed. For every special Subpana, be-} 6 8 fides the Duty and Seal on Small s for For every special Subpana renewed o 3 4 For every logie Label,

Six Clerks Office. mono a 101

Witnesses with the Oaths. d The Fees of the Six Clerks. minio 10

UT of all Copiesoof Proceedings filed in the Six Clerks Office, for every Office Copy Sheet. Englogic O red to be somet and I Out of all Exemplifications of buloni one Bills, Answers and Proceed-Skin.

Fo

11

0 12 8

of one Side For

	1. 3. 4
For examining and figning ev	ery?
Decree or Dismission	6.0.47.0
For the Custody of every Bo	ond Diamps Chno
entered into by Order	of Charge
Court to the Six Clerk w	
whom the faid Bond is lod	gd. Jane
e of the Caufe 2 2	hi2 does no
The Fees of the Sworn Cle	rks and Wait-
ing Clerks, including the	Stamp-duty.
FOR filing every Bill, and the Rule to answer, inc	Defendant w
OR ning every Bill, and	VI VISTATED
ing the Town for	4 : 40 or 5 ice
ding the Term-fee.	pear by Sub
For every Desclamation and	(reckoning H
fringaso de til momini	33名号964
For a Commission of Rebellion	A Pot eservice
For a Sequefication.	Tent More tha
For a Ne exent Regue.	0 14-10
For a Habeas Corpus.	0114902
For a Dedimus Poreflatem to ta	Resolution of
an Answer.	300 X 305 7
For every Special Dedimus	by 2 0 12 8
Order of Court. For a Commission to exami	
For a Commission to exami	ne 5 0 15 4
Witnesses with the Oaths.	His on II has
For joining in Commission For every special Commission	one.
for dividing Lands, and a	For Copies of a
certaining Boundaries or	CUOP & CO
therwise, by special Order	of Cambaga
Court.	
The Stamps and other Outgo	
are included in this 19 3. 8	AZ III
For every Writ of Execution	hina, Ani den
upon an Orders is an Ord	हिंद वेत कार्य
of one Side	)
	If

If

A

For it is considered to the constant of the co

1 12 A	L	5.	d.
If more.	. 0	13	4
If longer, then per Skin, belides	CO.	2	N PA
Stamps,	spire	9	8
For every common Injunction.		12	8
For every special Injunction.	1	6	0
For every Term the Caufe is in	) nits		
Agitation, the Sworn Clerks		•	
on each Side of the Caufe,	2018	7	43
are intitled to a Term-fee of	and the	03	
For the Appearance of every	b ann	200	*
Defendant who appears fe-	• 0	3	4
parately by himfelf.	22 31	12	大型.
If two or three Defendants ap-	dill I	mib	
(reckoning Husband and Wife)	111000	ero Le la	Fo
as one) the Fee for appearing	4.3	3	4
ban one Skin then it a		1	- Non-
But if more than three, not ex-	Ser Orn	A. T	OF
ceeding fix Defendants ap-			Po
pearing together, their Ap-	90	6	8
pearance Fee is	ASSI S	8	OI
If more than fix, the Appear-?	4303	th	oi
ance Fee is to not now at to 5	OI	Q	
And fo in Proportion to the Num-	23736	97	01.
ber of Defendants, reckoning	19,13		T
3 s. 4 d. for every three, Man	MOL.	E I	fo
and Wife still computed but as	31112	OZ T	Fo
one. Canadhanano laised	VEAT	7 4 Y	FO
For Copies of all Bills and An-	b.vib	70	
fwers, Depolitions and other	Rollous	175	
Proceedings, for each Sheet	3118	tork	
fix Words in every Line, in-	0 (	UU.	1.
cluding the 4d. per Sheet	que	20	dT'
paid to the Six Clerk.	ulagi	D18	
F 7 100 mark having V	200	9, 1	OT
The state of the state of the state of the state of	A UNITED TO	7 1	

## Cables of Fees.

a set your and a	1. s. d.
For a Rule to produce Witnesses,	The more
or to pais Publication and	TABBOT II
Notice thereof, including the	0 4 4
Stamp-Duty.	Eor ever
For festing down a Caufe for	7570-201
hearing before the Lord	Y 13 VA A
Chancellor, or Master of the	Leirat
Rolls, by the Six Clerk, ac-	1 5 6
cording to the Right they!	1111
claim for fo doing, for each	
Caufe so set down.	Destend
For drawing and inrolling De-	(latered)
crees and Dismissions, if not	12 913 4
exceeding one Skin.	doo Heek col
The like for inrolling.	100000
But if the Decree or Dismission be	
longer than one Skin, then for	
drawing every Sheet 8 d. com-	
And for inrolling each Sheets	3K-843
8 d. and then the Suitor pays	ing,"a
the 17 s. to the Six Clerk.	for arti
For a Writ of Execution of a	general
Decree, for every Skin.	
For attending the Court on	
the Day of Hearing of every	
Cause wherein they are con-	
cern'd.	FORGARIE
For all other Attendances on)	2199799
the Court when required,	0 6 8
each Attendance is	537007 11
For every Attendance on a Ma-?	6 6 8
fter for taxing of Costs.	745 Vo 404
For every Attendance on the	Marting?
Master on other Occasions, if	6 3 4
required, if with the Solicitor	
in the Cause.	16
Tol I	**

If Fo

and from the many	,		
of wishous the Colision than	1.	5.	d.
If without the Solicitor, then	DAS	8	8
For entering an Appearance with the Register, according to any	enaists	01/	
Order of Court.	count	3	4
For figning their Consent as	(3/80()	Cont.	
Clerks in Court to any Peti-	in of the	mail	
tion, Agreement or Election.	WILE	1	4
For drawing every Certificate?			
to be figned by the Six Clerk.	SEE O. ST		6
For examining all Copies of	HIDVO		*
Bills, Answers, Depositions of	DH2 bs	30	
Witneffes, Interrogatories or	Non a	101	•
other Proceedings with the	1011	0	8
Records in order for Evi-	many of	econ ye	1
dence if to Cheete	2015	aAT	1
But if more than 80 Sheets, the	in the same	nie I	
after the Rate of 1 d. per Sheet	C1202 (8)	0117	
For the Exemplification of any	HI TEST		3
Record (besides the Stamps,	o La ido		
the Mafter's Fee for examin-	h bn	A	
ing, and fworn Clerk's Fee	d, and	8	*
for attending to examine, and	10 17	15	
Hanaper Fee) for every Skin thereof.	W S	Spirit	
For drawing and ingroffing the	parage		
For drawing and ingroffing the Docquer and Mafter's Cer-	nd see a		
efficate belides the Stamp	ادواء		
which is T	Pisse		1
For attending the Master to	and the		
examine Exemplifications that		6	•
	4739	0-10	in in
	Aysia	100	*
	ant as	1	
For every Writ of Affistance to	(1999)	202	
put the Defendant in Posses-	QI	6	4
fion pursuant to a Decree.	פעורב	57	
Laufe Laufe	5	T	
		F	)[

8

1f

## Cables of Fees.

A. L. A. L. G. a. L.	1. s. d.
For the Copies of all Deeds,	SOUTH TE
Writings, Papers, Letters and	para senta estra. Sentita a sila
Accounts left with any Cierk	2543
in Court pursuant to an Or-	
der of Court or referred to	9 100 113
in any of the Pleadings for	A contract
each Sheet, computing Omce	charte and
Copy Sheets.	a silor
For every Attendance to pro-	man mal
duce fuch Deeds, Papers, Let-	A SME
ters or Accounts for the ad-	No of the last
verse Party to inspect if no	risidio
Copy be taken.	1000000
But if any Copy of fuch Deeds,	descay
Papers, &c. be taken, then no-	Edmil ton
tion or Attendance thereon.	elt rolls
For every Certiorari, Procedenda	(the right of the
and Superfedeas, each	0 8 8
	SIGN SHEET
Affidavit Office.	and column
1	13018 401
LOR filing, registring, copy-	Accounts
ing and figning every At-	0 2 0
fidavit, the first Side.	arrival"
Ryery other Side belides Duty.	0 0 8
For every Copy from the Omce	0 3 17 4
the first Side and figning.	dans 767
Every other Side besides Duty	0 1 0
For every Certificate.	6 CXIII
For every Search popped in and	ा जातर, १
of Every three Standard Con	图856
。 1000年1月1日 1000年1月1日 1000年1月 10	Visvs 101
amen or knowledged to the best of	an too
( 1991) C 1997 Had	ACTIVITY OF THE PROPERTY OF TH
Carlotte Carlotte	Register's

F

Fo Fo

Fo

Fo

Fo

For to in

### Register's Office.

	1.	3.	d.
FOR drawing all Orders each }	0	3	0
For Copies of all Orders, Ex-	0		6
Every other Side besides Duty.	0	I	0
Entring Orders each Side be-	0	•	6
For entring a Cause for Hearing.	0	1	0
For a Note to ground a Sub-	0	٥	8
For every Decree.	0	5	0
For every Dismission.	0	3	4
For every Certificate.	0	I	6
For the Register's Hand to all? Certificates.	0	1	0
For filing every Election.	0	0	4
For fearthing the old Books)		rici	
for any Order or Decree for every Year.	•	٥	4
For entring an Attachment or?  Proclamation each with Duty.	•	1	2
For entring all Rules of Course		NO.	rings
to Answer, produce Witnes-		ALC:	108
fes, and for Publication, &c. 5			4
For entring all Amerciaments.	•	•	•
For entring all Appearances on Contempts.	0	2	10
For entring of all Bills of Cofts?		44一大	115
in Time with Duty.	•	1	4
		9000	

G g

For

## Tables of Fees.

	I.	5.	a.
For all Copies of Attachments,			
Proclamations, Commissions	0	0	4
of Rebellion, &c. for each.			
For entring all Pleas or De-7	_		
murrers.		ALIC:	0
Poundage for all Money depo-	0		
fited with the Register.	Man.		·
For examining all Orders with?			
the Entring Clerks to be used		17.	2
as Evidence at Law per Side.		ni II	
For examining all Orders and	139	121211	
Reports with the Clerk of the Reports and Custody of		E -7	
the Entry Books to be used		. 0	
as Evidence at Law per Side.	011	73 1	01
For filing every Report, Certi-?	19	73 1	
Case and Amond	0	4	. 0
For Copies of all Reports, for		4	
the first Side.	0		6
For every other Side besides?	10		•
Duty.			P.
A Control Clear of Star of			1
Examiner's Office.	19		
2 1 Estimate Sopate			
TOR the Examination of e-7		Din i	07
very Person and Oath.	0	2	. 0
For Copies of Depositions, In-	HE		
terrogatories, &c. per Sheet. S.	•	0	10
For every Exhibit certified by ?	in	19 1	•
20.0000 BCCC (1980) · COMPANIES COM	THE WALL	2	
For every Certificate.	2/15/19	2	S
For the Examination of any	73	no 7	
Copy of Depositions with the	0	6	8
Original to be given in Evi-	131	2019	
dence in another Court.		1	V.
			17

For

F

F

W

For to For ti

Chairb of Mech.	
1. s. d.	,
For the Examination of every	
Witness, upon whom the	
Examiner attends out of the	
Office if near.	
If far off, or the Examiner occa-	
fioned to go often, more ac-	
cording to his Trouble, at the	
Discretion of the Party con-	
And Nacreed Regree	
1 21 0 5	
My Lord Chancellor's Secretary.	É
FOR every Petition for fer-	
I ting down Pleas, Demur- 0 10 0	
TELS. OF EXCEDITIONS.	
For every Petition for re-arguing Pleas, Demurrers or Ex-	
ing Pleas, Demurrers or Ex- > 0 12 6	
ceptions,	
For every Petition for fetting down Causes for Hearing for	
each Cause.	
Where there are feveral Pleas or	
Demurrers, or crofs Causes,	
then the Fees are double if two,	
and treble if three.	5
For a Warrant to the Serieant	
at Arms, Messenger or War- 0 15 0	
den of the Ficet.	. 77
For each Petition for a Ne exeat 2 0 12 6	
Regno. Reproside to Anni Santa ne	1000
For every Petition for a Letter	
to a Peer, and for the Letter.	
For every Reference on a Pe-	1
other Judges concerning By-	
Laws.	
Gg 2 For	

0

For

A A A THEOREM TO THE SAME	. d.
For a Petition to have the fame?	Tol
For a Petition to have the fame figned.	2. 6
For a Petition for an Homine re-	H.
plegiande, or concerning the	
Custody of any Infant, or	6
other Matter where no Caufe	old it.
depending: 1 distribution That a guita	00
For backing each Habeas Corpus.	
And Ne exeat Regno.	20 6
For each Petition for a Suppli- } out.  For a Caveat.	he
cavit.	Q.
For a Caveat.	11110
For Copies of Affidavits accord-	
ing to their Length, as in the	
Affidavit Office.	TIDE
Christian contains and the Christian	
The Day Vactor of this Court	

### The Door-Keeper of this Court.

E receives the several following Fees, which he diftributes amongst the several Officers who are respectively intians Ald tled thereto. For every Cause heard at Westminfter, if the Bill be dismif-Pomewaged. fed, the Defendant pays him a Fee of If a Decree for the Plaintiff, he? 10110150 9140 01 pays him, If an Iffue at Law, or Attornment directed, each Party o to o For every Guardian admit-7 ted in Court at Westmin- 5 0 10 0 fter. Lewing dong every

bread ad or For

F

For

t

in

For

For

For

For a

For 1

tion

For e

For e

S A . Same and a well on an all		s.	d.
For every Cause heard in Courty		214	1
at the Rolls in Term-time.		7	0
For every Guardian admitted?		6	
at the Rolls in Court.		•	•
Note; In Trinity and Easter Terms,			
when the Master of the Rolls		MS.	
fits in the Chapel, the Usher		Tot.	
has nothing out of any Cause			
heard, or Guardian admitted			
in Term-time, which increases	3.		
the Door-keeper's Fee 1 s. in	B.		
each of the two last Articles		3711	
for those Terms,		12.11	N
You pay to the Secretary of	De	25	10
the Master of the Rolls for	103	350	6
every Petition 5 s. and to the		33/3	**
Under-Secretary 6 d.		10.0	
			1

### Secretary of the Lunaticks.

FOR every Petition for a Writ De Lunatico inqui-	•	15	•
For every Petition for Grant of the Cuftody.	1	7	6
For each Order made on Hear-	1	7	6
For entring a Caveat.	0	5	0
For filing and copying every?  Affidavit for the first Sheet.	0	2	•
For every other Sheet.	0	0	8
For a Copy of Orders of Court? or Petitions, for the first Side.	0	1	6
For every other Side.	0	1	0
For fetting down every Peti-2	0	1	•
Gga		T	he

The Clerk of the Custodies of Idiots and Lunaticks ought not to take any Fee for attending the Seal, Hanaper or Clerk of the Docquets with any Commission or Grant relating to them, it totall) on at all

N. B. There are many other Officers and Fees besides those before mentioned, several of which are, and others are not, relative to the Proceedings in Equity; both which I have purposely omitted, as Matters beyond the present Design, and refer the Reader to the late Order made by the prefent Lord Chancellor Hardwicke of the 28th Day of Nov. 1743.

Balement of Saily with Lage 20 rail and to animal ways

the Deposit of the Artes

dre Renting in the art

reschone stade of the self of the self

Complete a County of Death Red a Bill or thing and gopping every? or a 18 th and the first first state of the state of the

Topic Chargadan Rate with and angering Charle Swing plone every Peri-3 a r 6 ld

tothe first the state of Court of HE

Woode Jedi

ing Richt of San Wille

tion to be heard. G g 4

1. s. d.

# TABLE

TO THE

### FIRST VOLUME.

N.B. The Titles and Pages marked with an Afterick relate only to the Introduction of the Chancery and the Officers, viz. the two first Chapters.

### A.

Batement of Suit, what. Page 237 - where by a Feme Sole Plaintiff marrying. - but the Death of the Wife, where they fue for a joint Right, will not abate. - nor the Death of the Husband, where in Right of the Wife. - nor by Plaintiff's Death after a Bill of Interpleader. - and where Trustees obliged to convey, though the Ceftui que Truft dies. ibid. where the Court will order Money out of Court notwithstanding the Death of the Parties. ibid. Gg4 Abate-

E

Abatement, where Plaintiff may bring ei-
ther an original Bill or Bill of Revivor.
where a Suit shall not abate by Death
where a Suit shall not abate by Death
of fome of the Parties.
See Bill of Revivor.
* Accountant General, his Office and Duty.
113 a and were as a min 34 35, 36
Administrator what.
- may bring a Bill before Administra-
tion granted.
- how far he shall be charged with In-
tereft. ibid.
- where his subsequent Costs ought to
be referved. ibid.
where Interest shall be reserved upon
a Decree. ibid.
See Executors.
Affidavit what.
for what. ibid.
how to be made. ibid.
where necessary, and where not, upon
a Bill for Difcovery of Deeds or Wri-
tings.
tings to be annexed to the Bill. ibid.
where feveral join therein, how to
be made and wrote. ibid.
before whom to be taken, and how,
and the Use to be made thereof. 16
when to be filed. ibid.
what Affidavit necessary to gain Time
to examine Witnesses. 16, 17
when to be filed, where it is to
ground an Attachment.
what Affidavit necessary on serving
Notice of Motion. ibid.
when to be filed where both Sides
are directed by a certain Day. ibid.
Affidavit
Aylagun

TWO I A D L.
Affidavit to be wrote on double 6'd. frampt
Page 18
how to be figned.
- the Form of an Affidavit, that the
Plaintiff hath not the Deeds inquired af-
ter to annex to a Bill before it be filed.
molitario de la como mante de la como de la
of Complainant, on bringing a Bill
of Interpleader. 20 that Plaintiff had Writings, but hath
loft them, proper to be annexed to a
Billiones art att tartur selle ibid.
for a Ne exeat Regno.
of having committed Waste. ibid.
of feeing Creditors fign a Petition to
supersede a Commission of Bankruptcy.
TELL MODELLE CONTROL WILLIAM PRINCES
of Poverty.
to annex to a Certificate of a Person's
being of Age. ibid.
who is dead or abfconds.
who is dead or abiconds.  that Defendant abiconds to avoid be-
ing served with a Subpana. 25
- of serving a Subpana for a better An-
fwer. 12 hard a military street ibid.
- of ferving a Subpana for Costs, and
Refusal to pay the same. 26
that a Plaintiff cannot be found. ibid.
that the Defendant cannot answer
without Sight of Goods in the Country. 27
- how if the Bill be for a Discovery of
Deeds. ibid.
that a Defendant is fick and unable to answer.
that a Defendant is unable to attend
to put in his Answer. ibid.
are any caree by the company of the
Affida-

Affidavit of a Witness being old and in on a Petition to examine him de her before Issue joined.  —— of Service of a Subpana to the	ne esse ige 29 estify.
of a Defendant, his Clerk in and Solicitor, in order to enlarge cation, the Commission being retu	Publi- irned.
of a Clerk in Court for the like pose.  of a Solicitor for the like Purpos  of serving a Notice of Motion.	e. 32
bis Money pursuant to the Master's port.  of serving a Petition.  of serving an Order on a Cle	s Res
Court.  of ferving an Order to confirm  Master's Report nist.  of ferving an Order on two Cle	35 n the 36
court of ferving an Injunction. to obtain an Order, that Servi	sbid. ce of eport
in Court.  of producing all Deeds and Write before a Master.  of serving a Writ of Execution	38 itings
of ferving the like on the Partie of having discovered new Matter a Bill of Review.	ibid. s. 40 r for 41
Amendment of Bill, how to move to mend, and when.	5, 6 send-

Amendment of Bill, where Cofts shall be paid. Page 6
when and how a Defendant may
be struck out of the Bill. ibid.
where Notice of Motion necessary,
and where not. 299
of Answers.
where a Defendant has examined,
the Court will not give Leave to amend
the Bill by adding Parties. ibid.
See Bill amended.
Answer, how to be drawn. 288
- when and how to apply for Time to
answer Cas Detisions thid
answer. See Petitions. ibid. where a Defendant is in Contempt.
and the to prosted and tent 289
- where he may have a Dedimus. ibid.
how to be granted. ibid.
where a Defendant is in Contempt.
290
how to be made returnable. ibid.
how to be made returnable. ibid to how many Commissioners to be di
rected. 291
- no fecond Commission without spe-
cial Order. ibid.
how to proceed in naming and firi-
king the Commissioners Names. ibid.
A Petition for a Dedimus to take an
Answer. ibid.
- the Commission or Dedimus. 292
before whom, and how to be taken
in Town and Country. 293
- Notice when the Commissioners will
execute the Commission. 294
-how to be taken by the Commissioners.
ibid.
사이 마른 내가 가는 사람들이 아니는 것이 되었다. 그는 것이 없는 것이 없는 것이 되었다. 그는 사람들이 하는 사람들이 가는 사람들이 되었다. 이 사람들이 아니는 것이 없는 것이 없는 것이 없는 것이 없는 것이 없는 것이 없는 것이다.
- the Oath on taking the Answer. 295
Defendant to fign the Answer. ibid. Answer,

Answer, how to be taken, if the Answer
of a Peer.  of a Corporation.  Page 295  ibid.
of a Quaker. ibid.
the Caption which is to be wrote at
the Foot of the Answer. ibid.
the Return to be indorfed on the Commission.
- how the Commission is made up. ibid.
how returned, where fent by a Mef- fenger. 297
— where by a Commissioner. ibid.
- what the Contents of an Answer
should be. 298 — where a Defendant denies a Fact. ibid.
- where a Bill prays Deeds to be fet
forth in bac verba. 299- where a relative Answer sufficient, 300
where to a Thing in Demand. 300,
- where a Defendant shall be tied down
by his Answer.  Purchaser not bound by an improvi-
dent Answer. ibid.  — a Defendant may charge and dif-
charge himtelt.
answering, pleading and demurring to the same Bill.
amending Answers. 300
Appearance, what Time Defendant has to
appear. 283 —— how entered. 283, 284
either voluntary or compulsory. 286
Appear-

HALL HALL TO SHEET TO
Appearance, where and how to be entered
Appearance, where and how to be entered with the Register.  Page 287
how to proceed against an ablcond-
ing Defendant for want of Appearance.
5, 288
an irregular Appearance will falve
Error in the Process, otherwise where an
Order is obtained by Male Practice
which occasioned the Appearance. 288
how to proceed against a Peer and
Member of Parliament for their Appear-
ance. 12, 13, 268
Attachment for want of Appearance, how
to be fued out de
-the Form thereof. 255
how to apply to have it returnable
immediate. ibid.
what is the Nature of an Attach-
ment. 261
for what made use of. ibid.
how to be directed into the Cinque
Ports, &c. 262
- into Lancasbire. ibid.
- into Cheshire. ibid.
into Durbam. 263
- to the Warden of the Fleet. ibid.
- to the King's Bench. ibid.
how to be made out for Costs. ibid.
- how to proceed against the Sheriff to
oblige him to make a Return. ibid.
- where to move for a Messenger on a
Cepi Corpus returned. 264
- how an Attachment is to be entered,
and with whom. ibid.
- a Defendant being taken to give a
Bond, or enter his Appearance with the
Register. 265
hat hawles bus selver of stank

Attach-

Attachment, how to discharge an	Commence of the second second
Attachment with Proclamations. S	age 265
Attachment with Proclamations. S	ee Pro
clamations. See Contempt.	Bui
5,288	
an igregular. Eppearance will laive or in the Process, otherwise where an	
or in the Process, otherwise where an	ERTS
DILL in Equity, its Nature. 19	bro 7
D how to be drawn; not	
impertinent or fcandalous.	ibid
to pay Costs if scandalous,	8 Men
for what it is brought.	s ibid.
how to be ingroffed and hied.	8, 246
- amended Bill, what o bool o	228
where and how to amend, 22	
ow to apply to have it returned	-230
See Amendment.	in the
- Supplemental Bill, what	230
where and how to be brough	to and
to proceed thereon.	0, 231
— Crofs Bill what. — when to be brought.	231
when to be brought.	11.101d.
where in a different Court of I	
oro Cachine and an armine of the second	i ibid.
how to proceed thereon.	232
of Interpleader, what, how b	rought
and for what. done le ou de ales	
- Affidavit of no Collusion to b	oe an-
nexed thereto. wo we were Plaintiff dies, the Suit do	-234
where Plainthe dies, the Suit of	es not
abatergradula a Michengrapada	N 1010.
- Certiorari Bill what, and how	o pro-
ceed therein. anomidani a s 23	45 335
who can bring this Bill w drive	1230
Delendairario See Certifrario Single CI	DOWN DAY
	237
when brought.	sold.
where to revive and answer.	ibid.
Attach	Bill
	LUNEY .

rev

는 HEAR NEED TO BE HEAR OF SECTIONS FOR THE PROPERTY OF THE PR	
Bill of Revivor, where an Executor mult	
filead de novo. Pare 237	,
plead de novo.  — who may exhibit this Bill. 238	
- how to appear and answer to it. ibid.	1
how to be drawn.	
- where Plaintiff cannot except to the	
Answer ander a Decrees whowlnh	
Answer.  where Plaintiff cannot except to the ibid.  where to be brought against a Feme	•
upon the Death of her Husband. 239	1
- if a Feme Sole Defendant answers	
and marries pendente lite, no Occasion	
to revive the ns of Moling ibid.	
and marries pendente lite, no Occasion to revive.  otherwise if Plaintiff, and marries.	-
and the second s	
others may.  a Devisee cannot revive.	,
others may.	
- a Devisee cannot revive. ibid.	
- but an Affignee may by Sti fa. ibid where the Administrator de bonis non	
- where the Administrator de boms non	
may revive.  —where a Scire facias ought to be brought to revive, and where this Bill.  ibid.	
where a scire facial ought to be brought	
- a Creditor may revive. ibid.	
nor necessary to revive against a De-	
fendant, who never answered. ibid.	
- now arrainft the Administrative of the	1
Wife. ibid.  — where the Heir or Executor may revive. 242  — where Defendant's Representive may. ibid.	
- where the Heir or Executor may re-	
vive I de al gaintug jon 33 3 3 4 4 212	
- where Defendant's Representive may.	
-bidi the Form of one of a Defendant's not	
where a Bill of Revivor upon a Bill	
of Revivor lies. And and a ibid.	
- where to name a Defendant, and	
where not live to they for a mile thid	
after Decree signed and inrolled to revive by Sei' fa'. ibid.	
revive by Sei' fa'. ibid.	
a Confortion Hearing a mayor	

137 bid. bid. Bill

Bill of Revivor, where deemed plemental Bill.  where it lieth not upon a long standing.  of Review what, and how hibited.  original, after a Decree, when by whom, for what, and he brought.	Page 24: Decree of 24: to be ex ibid nat. ibid ow to be
Lend Son Tendante Contamina	
All the state of t	A STATE OF THE STA
CAPTION to an Answer.	290
Certificate what.	131
their Credit.	ibid
as to Captions of Answers,	ibid
ec.  need not be filed where it	Regard
the water of Committee	CARREST MARKET
generally made touching M	latters of
	ibid
for want of Profecution, and	how to
proceed to dismis. See Dismissi	ons. 132.
next ry to revive hering a De-	133, 134
where for fetting down a C	ause and
for a Subpena to hear Judgmen	134
Commission to examine Witness	er for a
where for not putting in an	
ee Delendamine Rome em noite !!	ibid.
the Form of one of a Defend	lant's not
attending to be examined.  of the Six Clerk, of an Anfi	130
filed and no Proceedings fince,	in order
to difmis for want of Profecut	on, ibid.
- of no Proceeding after Replica	ation. 137
- of Pleadings being filed to	set down
a Cause for Hearing.	ibid.
THE THE RESERVE	· Certi-
	10 mg

Certificate of Pleadings being filed to fet down a Cause upon Bill and Answer. Page 138
Certiforari what.
where granted. ibid.
- the Form of the Writ and Return.
187, 188
* Chancery, its Definition, Jurisdiction and
Power. from 1 to 14
- its Jurisdiction in foreign Parts. 14
has de Tariffician of the Countries
-how the Jurisdiction of the Court of
Equity in the Exchequer interferes with
Chancery.
- how far the Chancery will exert a Ju-
risdiction in Matters cognizable in Infe-
rior Courts. 15, 16, 17
* Chancellor what, his Antiquity, Crea-
tion, Constitution, his Power, Title,
Oath and Office. from 17 to 22
Clarks of the Bessy Ben their Office and
* Clerks of the Petty-Bar, their Office and
3/3 303 34
* Clerk of the Chapel of the Rolls, his
J71 40
Commission of Rebellion, the Form there-
of. 257
- the Docquet thereon. 258
the Docquet thereon. 258 to whom to be directed, and how to
be returned.
- how to proceed against Commissio-
ners refusing to make a Return. ibid.
where a Wife taken on this Writ dif-
charged with Cofts.
charged with Costs. 271
Commission to plead, answer, or demur,
the Form thereof.
- to take a Quaker's Answer. 331
- to affign a Guardian, and take the
Answer by such Guardian. 332
Vol. I. Hh Com-

4 dd 4 a si-d ot 16 ng ler id. 37 noid. rti-

(2) [1] [2] [2] [2] [3] [3] [3] [3] [4] [4] [4] [4] [4] [4] [4] [4] [4] [4
Commission for the like Purpose, and to take the Answer of other Defendants.  Page 333
to take an Infant's Answer by his
Guardian already affigned him, and the
Answer of other Defendants. 335
to take the Plea, Answer or Demur-
rer of Infants by their Guardian already
assigned them.
- to take the Answer of a Corporation
337
for the like, with the Answer of other
Defendants. 338
to examine how and for what made
use of.
where to examine beyond Sea. ibid.
where and how to be delivered after
executed. ibid.
- always granted before Hearing as a
Right. 357
where granted to examine de bene
este. ibid.
where it may be made out ex parte
ibid.
who has the Privilege of the Car-
riage, and where a Duplicate allowed
ibid.
where Defendant may have a Com-
mission.
where by Plaintiff refusing. ibid.
who hath the Carriage on a new
Commission, the first being lost. ibid.
no Commission if Witnesses live in
Town, or in ten Miles thereof. ibid.
nor to be executed in Term-time
without Leave or Confent. 359
when to be made returnable, ibid.

Commission, who to give Notice, and what of the Time and Place of executing the Commission.  Page 359  where Plaintiff's Commissioners may proceed ex parte, and Defendant's cannot.  where Plaintiff's Commissioners not attending, Defendant intitled to Costs.
on the Commission being opened Interrogatories to be exhibited. ibid:  where Notice given, and the Commission opened, but nothing done, and no Adjournment, Commission lost. 361.  Memorandum to be made of Adjournment, and signed. ibid.  If by Default of him who has the Carriage nothing is done, he is to pay Costs. ibid.  where by the Error of the Clerk it becomes void. 362.  after Notice, and one Side does not examine, but prays a new Commission, it is at his own Costs. ibid.  in what Time to examine upon a new Commission, having not done it on the first. ibid:  where a Party in Contempt lives in the Country shall have a Commission.
where a new Commission allowed, and where not.  where upon new Matter arising at the Hearing.  what Affidavit necessary for a Commission beyond Sea.  where Commissioners misbehave how to proceed against them.  ibid.  Hh 2 Com-

A STATE OF THE STA
Commission to examine, a Commissioner
Committee to examine, a committee
may be examined as a Witness. Page 364
when a Commission ought to be re-
turned, where returnable without Delay.
ibid.
-the Form of a Commission to ex-
· 1000000000000000000000000000000000000
amine Witnesses. 365
the Commissioners Oath. 367
· 12、20、20、20、20、20、20、20、20、20、20、20、20、20
to examine a Defendant touching a
Contempt. 368
- to take a Defendant's Examination
on Interrogatories. 360
on Interrogatories. 369 to examine Witnesses and divide
그는 이번 없어는 요즘이 나를 하는 것이 없는데, 그는데, 그는데, 이 사람들은 이 사람들이 가는데 하는데, 그는데, 그는데, 그는데, 그는데, 그는데, 그는데, 그는데, 그
Lands. 17 Lands white enouge 370
to affign and fet out Dower. 371
Vide Examinations and Answers.
Contempt, where one Defendant is profe-
cuted to Sequestration, how to proceed
against the rest.
how to proceed against an absconding
Defendant and antibody and the
Defendant, share and olla bas spelle 5
bow to proceed against a Defendant
for not appearing or answering. 11,12,251
De la companya de la
where Defendant puts in an insuffi-
cient Answer, need not begin Process de
novo, but proceed.
where the Bill shall be taken pro con-
feffo.
where Process will not affect Lands
where Troceis will not affect Lands
in Ireland to sequester them for a Con-
tempt. ibid.
all Process herein ought to be direct-
an Process netein ought to be unect-
ed into the County where the Party is
usually resident. 276
The state of the s
otherwise if he is taken thereon, or
any Irregularity in the issuing, to be dif-
charged, and have his full Costs. 277
Contempt,

### The TABLE:

Contempt, Attachment on Process to be discharged on Payment of the ordinary Costs, and filing Plea, &c. Page 277  — Interrogatories not exhibited in eight Days after Notice, and no Reserence in a Month, the Party discharged with Costs.  277, 278  — but if Interrogatories are exhibited, and he depart before being examined without Leave, to stand committed. 278  — and if upon Examination he is found in Contempt, he is to clear it, and to pay the Costs before he be discharged.  ibid.
and though cleared of his Contempt,
Persons guilty of a Breach of the
Orders of the Court may be committed, ibid.
where a Solicitor shall stand com-
mitted for an Order unduly obtained. 288
See Attachment, Proclamation, Serjeant at
Arms, Sequestration, Distringas and Pri-
vilege; and also Vol. 2. under these Heads.
Coffe hour he preferred on not entring
Costs, how be preferred on not entring Bill, and how to proceed thereon. 283,
bill, and now to proceed thereon. 283,
284, 285, 286
- where for Scandal in Bill or Answer.
- 10 TO TO ME WOLF SO SHOW OF THE SOUR STATE OF THE STATE
upon a Dismission how to obtain
them. See Dilminon. 110, 132, 133
- on an Order obtained how to serve
the Subpana. 143
all Attachments on Process to be
discharged on Payment of Costs, and
filing Answer, &c. 277
filing Answer, &c. 277  upon replying to an Answer of Dis-
claimer.
cofts
claimer. 302, 311 Cofts
in water.

s 6 r 7 t,

Costs for an Answer reported insufficient
on Plaintiff's examining to what is
unnecessary.
Hearing, to pay Costs of the Day. 312
where on not proceeding on a Com-
miffion.
Curfitors, their Office and Oath, and the
Oath of an under Clerk. 35, 36
pay the Collaborate no be of Prayent
Ecree, how to be ferved. See Decree
Vol. 2.
Dedimus Potestatem. Vide Answers and Commissions.
Demurrer, what.
how many Kinds of Demurrers. ibid.
must express the Causes of Demurrer
when to demur, but cannot upon an
Order for Time unless it so mentions. ibid.
to be under Counsel's Hand, and ge-
nerally without Oath. ibid.
Plaintiff may proceed either by dismis-
fing or amending his Bill.
five Pounds Costs on allowing or over-
ruling a Demurrer. 325
proceed 'till Demurrer and Answer cannot
may plead, answer, and demur. wid.
Plaintiff may amend after a Demur-
ver.
to Answer, where the Bill shall be taken
the confesso
Demurrer Demurrer

Demonstrated and he deliment in Dest.
Demurrer need not be delivered in Person
or by Commission. Page 325, 326 may not return a Demurrer only, but
may not return a Demurrer only, but
may a Plea on a special Commission.
326 regits, distantill, on Payment of the
where Defendant, upon debating the
Demurrer, shall insist upon any Thing
more than is alledged, he shall pay the
ordinary Costs, rol guily song a hibid.
Proceedings therein the fame as on
Pleas vreigmored son at it oredw ibid.
what shall be good Cause of Demur-
mer. effold sett rol bisnor 326, 327, 328
demurring, pleading and answering to
the same Bill. no Rim let lo rabio -329
Disclaimer what a sold barren ballongor
- where it appears Plaintiff exhibited
his Bill for Vexation, Defendant shall
have Costs. do shu sheihid.
have Costs. where Plaintiff may pray a Decree
against a Disclaimant, and all claiming
under him.
mined as a Witness.
- where Plaintiff replies, Disclaimant to
have Cofts to be taxed: ibid.
but where Defendant disclaims Part,
and answers Part, there may be a Re-
plication to the Answer. ibid.
Difmission, what Time Plaintiff hath to
reply before Defendant can difmis. 342
an Order to amend will not keep a
Bill om Rootes or smagail a grade ibid.
where after Dismission after Replica-
tion the Bill may be retained on Pay-
ment of Colts. radi hasbord on ward ibid.
how to dismiss before Replication.
178 alanti W a an 132, 133, 134, 343
Hh4 Difmif-

# The TABLET

Dismission after Replication.  —— Plaintiff may dismis his	Page 34: own Bill ibia
Merits, Plaintiff, on Paymen Costs, may retain his Bill or brone.	ed on the
one Defendant cannot dismissiff is proceeding for the Answorther.  where it is not peremptory  Election	s if Plain
how to proceed for the Co	
order of Dismission duly si inrolled, a good Plea in Bar.	gned and
Distringas, when, how, and again made use of.  the Form thereof.  with whom to be entered,	ibid.
to proceed thereon.	267, 268
* E Xaminers, their Duty and C Examination of Witneffe Country, the Notice to be given	Dath. 34 s in the by Com-
how to be ferved.  a Summons for Witneffes to	ion. 373 374 appear.
where a Subpana to testify n	eceffary.
Title of the Depositions.  how to examine a Witness.	370 371 377
Aimlid + d H	Exami-

Examination of a Wit	ness in the Country,
how to fwear him.	Page 377
how to fwear him.  how the Depositi	ons are to be taken.
of a Connective for the	377, 378, 379
how to adjourn.	379
how Exhibits are	to be indorfed. ibid.
how to adjourn how Exhibits are how the Deposit	tions are to be in-
groffed, m	380
the Return to	be indorfed on the
Commission.	ibid.
the Return to Commission.  with whom, an	d how the Paper-
Draught of the De	epolitions are to be
left.	ibid.
left. how to be return	ed, if deliver'd to a
Messenger.	21 19 35 38I
Messenger.  how by a Commi	ffioner. ibid.
the Commissioner	s Fees. ibid.
of Witnesses in 7	
ries are to be exhibit	
Office, and Rules g	
	382
how to proceed	
fuses to be examined	
- how to be fworn.	ibid.
- a Witness being	[18] : ( ) [4] [1] : ( [4] [2] : ( [4] [2] ( [4] [2] ( [4] [2] ( [4] [2] ( [4] [2] ( [4] [2] ( [4) ( [4] ( [4] ( [4] ( [4] ( [4] ( [4) ( [4] ( [4] ( [4] ( [4) ( [4] ( [4] ( [4) ( [4] ( [4) ( [4] ( [4) ( [4) ( [4] ( [4) ( [4) ( [4] ( [4) ([4) (
Country, cannot be	
special Order.	384
of Witnesses de	
fablish their Testimo	
memoriam.	284. 284. 286. 287
how to examine	mina mace in open
Court malingalize	
See Wit	
Bacentions What	Debt on hosel
Exceptions what.	icient Answer ibid
how to be drawn	and delivered this
- cannot except of	er Replication and
Camiot Cacept ate	344 40 31 11 304
de andre here non strein	Procen
Exdeuce,	Tweebe

Exceptions, when to be delivered, an	V.
how to proceed thereon. Page 304, 30	~
now to proceed thereon. Tage 304, 30	5
no new Exceptions can be put in. 30	0
how to obtain a Commission for fur	r-
ther Answer	,
what Cofts to be paid Plaintiff o	4
what Coits to be paid Tiamen o	m
Report of Infufficiency. 201 word - ibit	d.
what to be paid Defendant if fuff	i-
what to be paid Defendant if fuff	
hands of the Republicant	a.
how to answer the Exceptions when	re
Answer infufficient and the ibi	d.
how to proceed where Defendant	is
Contempt and nuts in an infufficier	
in Contempt, and puts in an insufficier	11
Antwer.	7
where and how to except to the Ma	1-
fter's Report. Mindio 307, 30	8
how to obtain the Cofts on a Report	*
of infufficient Answer.	1
of infunction Athwer.	3.
where Defendant Submits, and put	:3
in an infufficient Answer, how to pro	)-
in an infufficient Answer, how to proceed.	
- T Clausi W. a. rec V. bancair or and C.	
for Insufficiency.	ı
for Iniufficiency: Doubling as of some	
Executor what a guisd about W is -22	
Predict what seing every a - 22	
how they and Administrators differ	•
now they and Administrators duci	
bid wild Order.	Į.
in this Court. The may charge and be charged	d
Mahlish their Teltimont warm of the their	1
ras des 32 mes of	
two are Plaintiffs, one excommuni	-
cated, the other may be fevered. 22:	2
Debt on Bond. W bid	a
Debt on Board Will Wash	1
City I Dona!	7
where a Prejudice shall be corned or	1
hintere to an infutitiont Ani Mohmit	t
where reliduary Degates of we Devile	
of the Refidue. safter shahen toth to	L
or the rectioned	
where excluded, and where not. ibid	
Executor	,

Executor, where liable on placing out
Money.

Page 223

Evidence of the Sufficiency and Difability
of a Witness.

what shall be admitted as Evidence,
and will amount to sufficient Proof. 389,
390, 391

where Paral or Collateral Evidence
will be admitted to explain, confirm or
contradict what appears on the Face of
a Deed or Will.

of examining Witnesses, exhibiting Interrogatories, and suppressing Depositions.

393, 394, 395, 396

### not be pleased in Didability of brin. He

EES, a Table thereof. from 403 to 414 Feme Covert, what, and how to fue and be fued. - how to be ferved with Process, and how to answer. - where to appear and answer without her Husband. where in Contempt. no Decree can be had against her if the Husband will not appear. ibid. where Heir of a Mortgagee or Trufree, though an Infant, fire thall be compelled to convey. Ibid. where allowed to fue alone where parted from her Husband. where upon a Divorce. " thia. where her Fortune not liable to pay Husband's Debts. where Husband shall be obliged to make a Settlement on her.

Hearing

Feme

Feme Covert, where a Citizen covenants to leave her so much at his Death, she has her Election.  Page 217  the Court cannot order her Portion to be paid without a sufficient Settle-
ment, or she consents.  where her Fortune shall be looked on as the Husband's Assets, as won ibid.  where not.  where not.  Garalled an allow g
Guardian, what.  Outlawry or Excommunication cannot be pleaded in Difability of him. ibid.
how appointed.  how removed.  his Office and Duty.  may discharge Incumbrances.  ibid.  In what Cases he shall be charged.
H. H
how directed.  how ferved, and the Punishment on Non-obedience.  where for a Prisoner in the Country.
turned over to the Fleet after a Decree.  where against a Prisoner in Execu-
the Form of a Habeas Corpus, 195

a classic The ST A B L Lavor
Hearing upon Bill and Answer. Page 11,
310, 311, 312
if Sabpana to rejoin be not ferved,
though fued out, Cause may be heard
on Bill and Answer.
Heir what.
- how favoured in this Court. ibid.
- where made a Party to a Bill to prove
a Will, he shall have his Costs, even tho'
he cross examines the Witnesses. 220
how to bring fuch Bill against him,
ibid.
Homine Replegiando what, and how obtain-
where granted with regard to an In-
fant being fent abroad.
where with regard to Husband and
Wife. sangadanial are total sibid.
- In what Cales he thall be charged
A Malada in a billionni en er wei
TDEOT what. See Lunatick. 204
TO A STATE OF THE PROPERTY OF THE PARTY OF T
· · · · · · · · · · · · · · · · · · ·
Infant what. 196 — how to fue and defend. ibid.
how to proceed against him on an At-
AND EASTER SHOULD THE RESIDENCE TO A SECOND SECOND STATE OF THE PROPERTY OF TH
tachment, after ferving Subpana. 197 — who may fue as his Prochein Amy. ibid.
who may fue as his Proceen Amy, tota.
can prefent to a Living. 198 in what Cases, and when, an Infant is
intitled to an Account, and against whom.
cannot be foreclosed without a Day
to shew Cause after he comes of Age.
in what Cafe a Danies was he had
in what Cafe a Decree may be had
against an Infant without a Day given
him. ibid.
Infant,

Infant, Answer put in by Guardian, no
conclusive to the Infant when he come
of Age.
That not lutter by the Neglect o
Trustees.  may have a Maintenance, the new management of the manag
Provision in the Trust, and upon Appli
cation this Court fettles the Maintenance
of Infants.
how they are bound here, and lef
favoured than at Law. 199, 200, 201
what Acts of theirs are good, void or
voidable. 201, 202, 203
Interrogatories what.
- for what Purpose made use of. ibid
- if in Town, may exhibit new Inter-
rogatories or more, otherwise in the
Country without special Order. ibid. — where new instead of the old. 352
where new instead of the old. 352 how to be drawn and signed. 353
— how to be ingroffed and produced if
in Town or Country.
where no new Interrogatories allowed
unless on a supplemental Bill. ibid
No Re-examination without Leave of
the Court.
how to be fettled if to examine a
Witness before Hearing after Publication
ibid
where upon a Reference to the Ma-
fter.
where a Matter of Account is refer-
where for a Profecution of a Con-
tempt. 355
of examining Witneffes, exhibiting
Interrogatories, and suppressing Depo-
fitions. 393, 394, 395, 396
Injunc-

THE FABILE.
Injunction what. Page 161
where granted when fued for Irregu-
larity in ferving the Process of this
Court, ibid.
when granted. ibid.
where against a Person in Possession. 162
- where to stay Proceedings at Law on
a Bond. ibid.
- upon what Suggestion granted where
to stay Proceedings at Law. 163
- how granted to stay Waste. ibid.
- how and upon what Injunctions are
obtained. ibid.
- how diffolved. 164
- where and how granted upon an At-
tachment iffned. ibid.
- where for want of an Answer. 165
where upon the Merits. ibid.
where it does not extend to stay Pro-
ceedings in the Spiritual Court. ibid.
when a Subpana may be fued out on
an Injunction Bill for staying Waste or
Suits at Law. ibid.
- how to proceed to dissolve an Injunc-
tion, on coming in of an Answer after Attachment.
where granted and dissolved on Mo- tion of Course. ibid.
how to diffolve the Injunction after An-
fwer come in, and what are good Causes against dissolving the same. 166, 167
dant's Answer, by Reason of other De-
fendants not answering.  where continued only till the Answer
of other Defendants come in. ibid.
what is good Caufe to dissolve an In-
junction for staying Waste. i ibid.
Injunc-
Injune-

f 4a 1.1. 1-1. 5 18 0-6 c-

Injunction when granted upon the Merice
Injunction when granted upon the Merits, to what Time continued, and how dif-
folved, and upon what. Page 167
- how diffolved upon a Plea or Demur-
where granted upon an amended Bill
after Answer and Demurrer. ibid.
refused whilst a Plea and Demurrer
are depending. ibid.
how obtained and continued on Ex-
ceptions to an Answer. ibid.
- where Waste not punishable at Com-
mon Law restrained by this Court. 169
- in Behalf of an Infant in Ventre
fa mere where made perpetual, and the
Jurisdiction of this Court to quiet Men
in their Possessions. 169, 170
granted to prevent pulling down of a Castle, the dispunishable of Waste. 171,
Castle, tho' dispunishable of Waste. 171,
- upon what the Court will not grant
an Injunction. ibid.
for Possession before Hearing how dif-
folved.
where pending the Suit. ibid.
- where on a Bill taken pro Confesso, ibid.
how to be ferved. 172, 173
when discharged for not serving it.
173
where and how in Contempt after
Service. ibid.
- tho' irregularly obtained ought to be
obeyed.
how to proceed on an Irregularity in
obtaining it.
an Order for an Injunction on a De-
dimus.
Docquet thereon. 176
Docquee thereon.

The THE	L L.
Injunction, Order for an	Injunction on an
Acrachment.	Page 194
- Docquet thereon.	The motor ways
- the Form of a co	
or valuables or Denor.	minon injunction.
	1004 Annual -179
on an Order for Ti	100
on an Order for 11	me. ibid.
- on an insufficient A	
on an Attachment	
Answer.	ibid.
to flay Waste.	ibid.
- fpecial to ftay Exec	ution till Hearing.
to the second some at	182
- the like to stay co	pying, engraving,
&c. and felling Prints	pursuant to Stat.
&c. and felling Prints 8 Geo. 2.	11000 0000 183
- to deliver Poffession	of Lands purfu-
ant to a Decree.	\$81 harrist 188
Joining in Commission ho	
- where Defendant re	
ceed.	348
- where a Commission	
is Counfel or Solicitor	
out ?	ibid.
stanging of the Spices s	
Dr. Daymans at the har	Change and we
Par Payment of the Act	vector an extension
T Unatick what.	PROPERTY TENETHER PROPERTY.
Unatick what.	204
if on Inquisit	ion a Perion is
found an Ideot, it mus	
- A And soft district n	Down Bid.
- how Ideots and Lur	aticks are to fue
and answer.	204, 205
what Right the Cor	nmittees have in
their Lands.	TARMENIZOS
to whom the Cufto	dy shall be com-
mitted.	ibid-
Ma woll but Endopora	Harry Contraction
Voul. II	Lunatick
	The second second

2 ... 3 .. 3 .. d. e 4 n d. e - 56

Lunatick, what Estate the Committee of a Lunatick hath. Page 205
where a Lunatick marries. 206 what Acts of Ideots and Lunaticks
are good, void or voidable. ibida
being Trustees, how to convey. ibid. See Lunarick, Vol. 2.
tor See Lunarick, von Beyou
*MASTER of the Rolls what, and how made, his Power and Oath.
how made, his Power and Oath.
Masters in Chancery, their Duty, how
called formerly, and their Oath, 26, 27
Mafters Extraordinary, how to proceed
to procure the Commission. 27, 28  * Master of the Subpana Office. 33
Member of Parliament. Vide Privilege.
Money, how and to whom to be paid in
this Court.
how to be placed out. ibid.  how to be applied for and received.
what Sum belonging to the Suitors is
to be applied for Payment of the Ac-
countant General, and his Clerks Sala-
touching Exchequer Orders and Tal-
lies.
Mortgage. Where a Mortgagor may ap-
ply to the Court without putting in any
Answer for a Reference.
Motion what
— where of Course, ibid. — where special, ibid.
when Notice required and how. ibid.
Motion,

Motion, what Notice, and on w	hom to be
lerved.	Page 106
- how Notice to be ferved	where to
receive Money out of Court.	106
what Costs where Notice is	given and
not moved.	ibid.
- Days of Motion.	107
- a Notice of Motion.	ibid.

what, and what Rolls what, and
NE exeat Regno what. 188 — where granted. 188, 189
where granted. 188, 189
- where for a private Matter. 189
- where the no Bill filed. ibid.
where upon going abroad to avoid a
Sentence in the Ecclesiaftical Court. ibid.
- where granted till Security given. ibid.
how directed. ibid.
how marked on the Back for the Se-
curity to be given thereon. 190
- how to discharge it after the Party
taken thereon. ibid.
how where all Equity is denied by
the Answer. ibid.
- Surety not to be discharged. ibid.
what is an Abuse of this Process. ibid.
Noblemen. Vide Privilege.
Notices. See Answer, Commission, Exa-

## Anther for Roserence.

OFFICERS of this Court, a List of them. from 397 to 402 Orders interlocutory what, and how obtained. Ii 2 Ordera

Orders to be pronounced in Court, and
how and by whom to be drawn up. Page
Life of teles by control of haspinte
where of Course a where of 140
upon Petitions by whom to be drawn
type and how.
where the Register mistakes, how to be rectified and rebelgages of 141
former Order ought to be taken No-
tice of in a subsequent one.
when entered cannot be altered. ibid.
how to move to make an Order Nifi
bid. for a Serjeane of Arms . stulolde !!
a Submission to an Award may be
made an Order. 142
how to ferve Orders, and to bring
Parties into Contempt thereon. Wild.
where the Party on whom the Order
is made will be committed to distill a sibid.
as to Disobedience to Orders 143
where for Payment of Costs how to proceed.
the Form of an Order to make an
HIARTIES to the Sult, whinoisald me
- to ferve a Subpana on an Attorney.
to add a Defendant to a Bill. 145
to affign a Guardian to the ibid.
to fet down a Demurrer 146
to over-rule a Demurrer odw ibid.
to diffolve an Injunction Nife, ibid.
to examine into the Regularity of an
Attachment, &c. 2003 ad 147
Attachment, &c.  to examine into the Regularity of re-
turning a Proclamation. ibid.
due taking of a Plea, Answer and De-
morrer avel det soffat Co system 148
for a Haleas Corpus. and hibid.
within Order

Order to refer a second Answer. Page 149
for a Commission to examine de bene
effer and to refer Exceptions. ibid.
to renew a Commission.
to flay Proceedings on Exceptions to
Ha Report, a consessed and to see sibid.
to confirm a Report Nifi.
for a Supersedeas upon an Arrest. ibid.
- to dismis a Bill for want of Replica-
to diffinis a Diff sor want of Replica-
tionatoj s Pogobubenilons dromen w 452-
- Nisi for a Subpana duces tecum. ibid.
Carla Collador dues and and
for a Subpana duces tecum. 153
for a Serjeant at Arms. die ibid.
to examine viva voce.
10 Samme wood voce.
for a Subpana Scire facias. ibid.
ro flay Proceedings on a Decree on
Clima Dill of Danies
filing a Bill of Review.
to fland committed for not perform-
ling a Decree. and the statistid.
ing a Decice.
for an Injunction to put and quiet the
Plaintiff in Possession according to a De-
o creembasm A no effect on Amendment of
well were low the Parties may have
DARTIES to the Suit, who may com-
DAKT IES to the built, who may come
Intelmence Suits. It of work and and and
where in one's own Right, or in
Distract another
Right of another.
who ought to be made Parties. ibid.
who are Defendants to a Bill. ibid.
where upon a joint Interest. ibid.
where want of Parties shall not abate
thind Suit out tol affert the uniteredult 3.
where two Executors, and one lives
wabroad and to squared It should ibid.
in Cafe of a Charity. ibid.
upan'a Veftry Order wat ibid.
where a Truftee for feveral called to
an Account by one. ibid.
Parties,

1 4 . . 5 d. 6 d. d. m . 7 - d. e - 48 id. er

Parties, a Legatee may fue without other
agioning sinus dealt municadt as all Page
Executors. Trustees. Co-obligors
&c. must be Parties. ibid
but where Plaintiff alledges he know
not one of the Executors, no Caufe of
Demurrer. hall file a nothe an libid
where Ceftui que Trufts or refiduary
what may be perisioned to assarged on
where if an Executor of a joint Ob
aligor is fueda terral los noga arana ibid
none to be Parties but who may be
Sound by the Decree & an notified shid
where one Defendant is profecuted to
Sequestration, how to proceed. ibid
where Defendant absconds, how to
proceed on the Stat. 5 Geo. 2.
a Bill may be against a Factor with
out his Co-factor. when and how to smend a Bill and
when and how to amend a Bill and
add Parties. Month and Month and Mind
where to pay Cofts on Amendment.
- where Perfons not Parties may have
the Benefit of a Decree. ibid
when and how to strike out a Defen-
adant. 200 8 awo sono qu awarb Mid
Pauper what. of or organization ward 224
how admitted.
where as Plaintiff of the total abid
to pay no Fee but Labour in Wri-
es the Braceis of Kontempelines and
where he contracts for the Benefit of
schis Suit. hand dromuteni da solast, est
fealed. Sale Mondal & business of 226
Micaled. a sallba wantill a basais or 226
how he may be dispaupered
where both Plaintiff and Defendent
may be admitted.
ensisted Pauper

Pauper pays no Costs, but punished per-
fonally as the Court shall think fit Page
722 Lyccurors Lybranices, Co-obligors,
See Petitions. od flum Alde
Petition what alle Times Plantin alletted was 1942-42-
when it may be preferred before as
well as after a Bill filed.
bidi Vor ne Celus que Prussura V esti
what may be petitioned for, and upon
what Accounts, and how. A ore der ibid.
where upon collateral Matters. 43
where to discharge an Order obtained
on Petition ex Parte of ada ve bauibid.
in what Marrays and as he areformed
in what Matters not to be preferred.
hand a three reality of the second of the se
how to lodge and procure the An-
44 of the State of Gorga Darwil
C. MICHIGAN SWAND CONTRACTOR STONE STONE STONE STONE STONE STANES
what may be petitioned for in the
Vacation. Tobal-od and sibid.
in what Matters to petition the Chan-
gellor.
no Subpana, Artachment, or other
Proces, to iffue till Order drawn up.
bidie Lestelingof a Decrees ibid.
in what Time fach Order ought to
bow Orders are to be made use of.
bide bide brains wer ibid.
the Form of a Petition for a Subpana
revariable diminediate of on van 46
for Process of Contempt returnable
dimmedia administrativo and a 47-47
for the Chancellor's Letter to a No-
Library Williams
84 ma Reports of Contempt at his namelew
to amend a Bill by adding a Defen-
eter done to man on dispaperede stante
to amend a Bill on Payment of 20 s.
nausfig Ii4 Petition

### The TABLET

Petition for a Plaintiff to diffmis his own
Bill with Coffe! Page 51
and to tax Coffs upon the Breach of ar
and to tax Cofts upon the Breach of ar Order.
the Serjeant at Arms.
the Serjeant at Arms.  For a Return of a Writ' of Inquiry
for Plaintiff to give Security living
abroad, and for a Month's Time to an-
fwer after fuch Security given.
Panperis of Alastanian To de Alastania
Pauperis.  for a Defendant to be admitted in forma
forma Pauperis. Dan 300 133 3 0159
and for Time to return the Answer
thereon :montant
to put in an Answer without Oath.
of the section of the
for Time to answer.
I the think and Philippida apre as as to
for Time to answer and return a De-
dimus.
to examine a Witness de bene effe be-
AMARING STATES OF STATES O
Commissioners Names, or in Default to
iffue the Commission ex parte. 66
dian, and to take the Answer by fuch
dian, and to take the Answer by such Guardian.
to take an Answer de novo, and to a-
mend the Caption and stay Process 68
2006e
Petition . Petition

Petition, to receive Exceptions, Page	70 ns.
another to refer Exceptions.  to renew a Sequestration.  to withdraw a Replication and amera Bill on Payment of 20 s. Costs to sue Defendants as have answered.  for a Subpana to rejoin, and that Sevice on the Clerk in Court may be goo and to join and strike Commissione Names.  to join and strike Commissione Names, or in Default to issue a Commission ex parte.  to alter a Commissioner's Name in Commission, and for Liberty to remember the same, and for Time to return	72 73 73 74 74 75 75 75 75 75 76 2
not to examine any Witness already examined.	2 1. 3 0 7 1. 4

Petition

Petition to prove a	n Exhibit viva wocest
a Hearing.	er in fone Caufe may
that an Anfw	er in fone Caufe may
be made use of a	t the Hearing of can-
other. Dienord	88 to the Indicated
	as taken in one Canfe
may be read and	made use of at the
Hearing of anoth	enical and a Section 5089
for Leave to e	xamine Witnesses after
	the usual Affidavic 90
	Cause for Re-hearing,
on Detendant's	having made Default
and not appearing	at the Hearing and
	ea to be argued 92
	ceptions to a Master's
to for down	a Caule for Hearing.
	4 Pourthe lame, and fo
to appoint a f	ort Day for a further
Hearing on a Mai	er's Reports navings
that Service of	an Order nife to con-
firm a Report on	the Clerks in Court
may be good Serv	ogniminare to pleadesis
	eretal Order supe pro
. atunc	fil ada lo redione 97
	rol a Decree nanc pro
func.	8geed to lifue.
for an intant	convey pursuant to
Stat. 7 Ann.	me of Age to enlarge
Time for thewing	Cause against a Decree.
amo Condendado	Joi wheat Heat oblined
to tax a Soli	citor's Bill of Colls.
manufact residence	woo her bustell di 102
another of the	like Kind upon a Bill
delivered.	40 Los link eference of
The Reserved of the Parket of	Dependancy
Redelon	Plea

Plea what is tididad no svore	PAGE 219
how many kinds.	ibid.
Frand must be denied !	v Answer.
-mot by Plead and an io alu	Stan 314
to the Jurisdiction, or in	Difability,
must be on Oather suoithoga	ibid.
also of Privilege, an hard	ibid.
and Pleas in Bar, where	and where
acc to examine that no hat the state	
where to plead and answe	
on Order obtained for T	
plead unless it is so mentioned	
der antraded besseration we	H 108 HB45
cannot be taken on gener	al Commit-
fion to take an Answer only.	illing ibid.
after Proclamation no Plea	or Demur-
rer can be put in without L	
Court. Contento	managaria.
where to plead and answer	, or plead,
where the same Benefit by	Answer as
port on the Clerks gnibal .	Autwel as
where to plead Dependence	v of a for-
mer Suit, and how to proceed	d thereon
con Committee of Rebellion	
where to reply to the Plea	
ceed to Iffue.	ibid.
where Plaintiff, and how,	may pro-
ceed to have Plea argued.	217
where it is not fited in Tie	ne, how to
proceed. The way her Ashi was	
when Pleas ought to be filed	and with
whomas with the same	ibid.
if Defendant does not, Pla	aintiff may
petition to have it argued.	ibid.
of Reference of a Plea	
Dependancy.	ibid.
P.GMA	Plea,
	1

Plea, the Caption. Page 319
other Part, and so plead, answer and demur.
other Part, and io plead, aniwer and
demur. The contract of the state of the stat
what Costs on allowing or over-ruling Plea on arguing.
what shall be a good Plea and well
pleaded. 319, 320, 321, 322, 323
what shall be a good Plea and well pleaded.  pleading, answering and demurring to the same Bill.
to the same Bill. 329
an Order of Dismission a good Plea
in Bar. 1 be constant of all about he giz
Privilege, how to proceed against a Peer for his Appearance.
against a Member of Parliament, and
how ferved with Process 73, 268
how to proceed against a Member of
Parliament in Contempt. 268
how against a Peer.
Proceedings in Equity in general, from the Bill to the Execution of the Decree.
from 7 to 14
Procedendo what.
Process of Contempt. See Attachment,
Proclamation, Commission of Rebellion,
Setjeant at Arms, Diffringus and Seque-
fration.  Prochein Amy what.
may bring a Bill in Behalf of an In-
fant without his Confent, otherwise in
the Case of a Feme Covert. bid.
Excommunication or Outlawry can-
not be pleaded in Disability of him.
burnanda er te a manada er andre milita
Proclamation. 256
- i voimination

The I T V D Tute
Publication, how and when to enlarge it.
no Order to pass it, without Notice
and Order obtained for that Purpose, 347
- if Witnesses, are examined in Town,
how to give the Rules to produce and
1. Part 1. The control of the contro
pals Publication.  if in the Country.  when these Rules are out.
when these Rules are out. 350
See Petitions
Katha Shire on Ol
an Order of Dumission a good Plea
Arc III III
D Eceiver, how to proceed on his being
R appointed. 124
Reference what.
what the Master is impowered there-
by to do. ibid
- to whom made. ibid.
not made without alledging the fpe-
cial Causes in the Exceptions to an An-
fwer, and a Reference of the State of
the Case, but rarely granted without
Consent. ibid. where upon a Demurrer or Question
touching the Jurisdiction of the Court.
ibid.
where after Examination of Witnesses.
al an to blade and the delication ibid.
-how to proceed thereon, and to take
out Warrants and ferve them. 109
how to under-write the Warrants. 110
where Matters of Account, or Taxa-
tion of Costs, what requisite. ibid.
- where a Matter of Fact is admitted
before the Master. ibid.
A CENTRAL PROPERTY A THORSE HELDOLI
Refe-

Reference, who are at Liberty to	defend a
Proceeding before a Master	Page 111
- where Sums are 40 s. or und	er, what
Proof necessary. bald	bid.
* Register what, and his Duty.	32, 33
* Register of Affidavits, his Duty	.n. Dns33
Rejoinder a socions A galagie no	346, 347
Replication when to be filed at	340
of two Sorts, general or spec	ial. ibid.
where it must be general.	ibid.
- what Parts to reply to, on	Pain of
Cofts.	ibid.
how to be drawn. anold are	341
where fetting forth Matters	not con-
tained in the Bill demurrable.	ibid.
where Plaintiff cannot reply.	ibid.
it must be to Plea and Answ	
and not the Plea only.	ibid.
where a special one put in	may be
admitted to put in a general or	e. ibid.
Caufe heard on Bill and Anf	wer. and
on Rehearing Plaintiff allowed	o reply.
Copy ( will, but foliomedand mass	and shid.
where necessary to reply the	
Witneffes required.	GOD 242
hath till the End of the thir	d Term
to file Replication, after comis	no in of
the Animer before liefendont	PAR DEO-
ceed to dismis.  the Form of a Replication.  how to be ingrossed and filed	all ihid
the Room of a Denlication	0.040
how to be instructed and filed	343
Denote the	out Make
Report what.	aired her
no special Report unless requ	nred by
the Court. I oder manifer of grad	ibid.
how to be drawn. Word has	1018.
where irregular. 201014 n 3	ibia.

Report, when prepared, and how to take out Warrants thereupon. Page 112—when Objections and Exceptions are to be filed, and how.  — with whom Exceptions are to be filed, and how to proceed thereon. ibid.  — upon arguing Exceptions nothing admitted in Support thereof but what was laid before the Master on the Objections.
where there is a defective Account.  where Money is reported due. ibid.
when to be filed.  how to be confirmed.  tis  where the Parties cannot be found, or are numerous.  ibid.
how to proceed thereupon.  tion  tion  tion  tion  to proceed thereupon.  tion  tion
the Court will but feldom, and that in special Cases, stir a Report after it is confirmed.
where an Estate is to be fold. ibid.  the Form of a Report of the Arrears of an Annuity.  of passing a Receiver's Account. 122
a Mortgage.
where a Mortgagor may apply to the Court to enlarge the Time to redeem, and how.  126, 127  how a Mortgagee is to apply for an absolute Order to foreclose.  127
Report,

Report, who must attend to receive Money reported due.

Page 128

a Letter of Attorney to receive Money reported due at the Time appointed by a Master's Report.

Returns of the four Terms. 279, 280, 281, 282

Revivor. See Bill of Revivor.

S.

Candal and Impertinence how to	he ex-
D punged.	
	7
	THE RESERVE THE PARTY OF THE PA
	- 39
- to draw up the Order.	
- intitled to take up all Persons i	n Con-
tempt after a Commission of Re	
this of the Report nocellary, and	CONTRACTOR AND
Sequestration, how to obtain it.	
the Form of a Sequitration.	ibid.
what.	272
the Commissioners Duty.	273
- where to be discharged as to	
fon who defires to be examined	
teresse suo.	
- where a Suit is for Lands it	The second secon
granted for all the Party's Lands.	
when may be granted.	ibid.
for what, where the Thing d	A SHARL SHEET HERE THE A
	THE R. LEWIS LABOUR LABOUR.
is a personal Duty.	275
like an Outlawry at Common	
	ibid.
- Lands of the Husband, out of	
an Annuity iffued, sequestered, as	
'Husband dies, Sequestration disch	
	ibid.
ALLEGA	Seque-
	1000 CHEST

### THE TABLE.

Sequestration, a Conveyance, no	voluntary or Bar to a Sec	fraudulent peftration.
- where Defer	idant was go	ne abroad
having been arre a Sequestration —— iffuing as a m	was granted.	ibid.
by the Death of after a Decree.	f the Party,	otherwife
from what T none but the	ime it binds. Sequestrators	276 themfelves
are answerable for what they sha	or their Acts. Il retain, and	for what,
where on mean if one Defendent questration, how	dant is profect	ted to Se-
affect Lands in I	is of this Cou	rt will not ester them
for a Contempt.	eir Antiquity	Bufines.
Fees and Oath. Subpana to answer	how to be	28, 29, 30 fued out.
where return Affidavit to o	able <i>immediate</i> btain fuch <i>Sub</i>	248 pæna. 249
thereto.	Think this	249, 250
- how to be fer - how to be fer - Affidavit of S	rved.	251
of Service on	the Day of th	e Return.
of ferving few what hath be thereof, and how where a Defenda	veral Defendance een held good w to apply to	nts. 253 od Service
Vol. I.	K k	Subpana.

TYPERAMBANE.
Subpana, how to proceed against an ab-
sconding Defendant pursuant to late Sta-
tute. Page 5
when to fue out a Subpena on an In-
junction Bill.
Subpana for Cofts. 1. 10 9, 285, 308
Subpans for Costs. d. 10 9, 285, 308  how to be served.
bomm for a better Aniwer won 308
to rejoin. 10, 346, 347
of Scire Jacies in Manualium 1241, 242
Scire facias. 241, 242  ad faciendum attorn. 243  to hear Judgment, how and in what  Manner to obtain and ferre it. See Cer-
to hear Judgment, how and in what
Manner to optain and terre it. See Cer-
tificate. 134, 135
* Sworn Clerks how qualified, and their
Duty. 30, 31, 32
<b>T.</b>
The state of the s
Rustee what.
Heir of a Mortgagee a Truftee
for the Executors. ibid.
- Infants being Trustees how to con-
vey. ibid.
no Act of a Trustee shall prejudice
the Cestui que Trust. ibid.
- how to fue. ibid.
- what he ought to do. ibid.
- what intitled to. ibid.
where if he is robbed of Money. 212
his Power.
213

\* USHER of the Court of Chancery, his Office. 35

Wafte. See Injunction.

Witness, how and when to be examined.

of examining Witnesses, exhibiting Interrogatories and suppressing Depositions.

293, 294, 295, 296

See Evidence and Examination.

Sweet Cherry on our fred and the

- Infants being Treifines bers to rea-

a Vrulite faeli prejudice

.bidi

1.

25.62

disW \* W

The End of the First Volume.

. ---- where it he is robbed of Money 212

- fhall not be ever inted as a Winnell

Tall ER of the Court of Chancers.

I PORCE .

### LAW BOOKS

### Lately Published,

## Printed for T. WALLER at the Crown and Mitre in Fleet-street,

2. CASES in Equity during the Time of the late

2. D'Anvers's Abridgment of the Common Law.

N. B. The Third Volume to be had alone.

3. The Law for and against Bankrupts. By a late

Commissioner of Bankrupts. Price 5 s.

4. Tenants Law: Or the Laws concerning Landlords, Tenants and Farmers. The Twelfth Edition. Price 3 s.

5. Lilly's Modern Entries: Now carefully translated into English, with many additional References. Price

1. cs.

6. A New Edition of Sir Thomas Raymond's Re-

ports. Price 1 l. 18.

- 7. Trials per Pais: Or the Law of England concerning Juries by Nifi Prius, &c. with a compleat Treatife of the Law of Evidences. The Seventh Edition: Price 6 s.
- 8. Law of Ejectments. Uses and Trusts: And History of the Exchequer. By a late learned Judge. Three Vols. Price 12 s. 6 d.

9. Lord Chief Justice Hale's History and Analysis of the Common Law. The Third Edition. Price 5 s.

10. Baron and Feme: A Treatise of Law and Equity concerning Husbands and Wives. The Third Edition. Price 6 s.

11. The Compleat Sheriff. Wherein is fet forth his Office and Authority. The Third Edition. Price 5 s.

12. The Gentleman's Law: Being a Compleat Treatife of all the Laws and Statutes relating to the King and the Prerogative of the Crown, the Nobility, and the House of Lords, &c. Price 4 s. 6 d.

13. Cases of Practice in the Court of Common Pleas, with all the Rules and Orders of the K. B. and C. B.

down to the last Year. Price 16 s.

0x. 26/1/15

